

# MANUAL FOR ELECTION OFFICIALS OF WEST VIRGINIA



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# 1 CHAPTER ONE: Introduction and Relevant Laws

## Introduction

The West Virginia Secretary of State is the Chief Elections Officer of the state and is responsible for creating policies and establishing rules for the administration of elections in West Virginia.

Working with election officials across the state, the Secretary of State receives and publishes Campaign Finance reports for candidates running for statewide office. The Secretary of State is also a member of the State Election Commission, which is an advisory body that recommends policies and practices relating to elections, voter registration, and voting system certification.

Both the Secretary of State and the State Election Commission are additionally responsible for investigating potential violations of the West Virginia Code and operating an Investigation Unit to focus on all aspects of election law violations.

The purpose of this manual is to provide comprehensive explanations of primarily Chapter 3 of the West Virginia Code. This manual also incorporates statutes, administrative rules, and case law at both the State and Federal level that govern election processes in West Virginia.

## Applicable Laws and Treaties

### *The United States Constitution*

Since its ratification in 1789, the United States Constitution (U.S. Const.) has provided the governmental framework for the country at large. In West Virginia, election officials look to the provisions of U.S. Const. Article I, Section 4 to understand the administration of federal elections. This Section, along with other constitutional provisions, grants civil and voting rights by abolishing poll taxes, establishing the voting age, and preventing states from restricting citizens' right to vote.

According to U.S. Const. Article I, Section 4:

"The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but Congress may at any time make or alter such Regulations."

Thus, the Constitution allows individual states to schedule and arrange elections for their own officials, subject to congressional oversight. West Virginia's Legislature exercises this authority through Chapter 3 of the West Virginia Code. For federal elections, however, Congress has established a uniform date for all states: "The Tuesday next after the first (1<sup>st</sup>) Monday in November, in every even numbered year."<sup>1</sup>

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<sup>1</sup> 2 U.S.C. §7.

### ***Amendments to the Right to Vote***

The 15th amendment, ratified by West Virginia on March 3, 1869, ensures that the right of citizens to vote “shall not be denied or abridged... on account of race, color, or previous condition of servitude.”

The 19th amendment, ratified by West Virginia on March 10, 1920, provides that “the right of citizens of the United States to vote shall not be denied or abridged... on account of sex.”

The 24th amendment, ratified by West Virginia on February 1, 1963, provides that the right to vote shall not be denied or abridged for failure to pay taxes, especially poll taxes.

The 26th amendment, ratified by West Virginia on April 28, 1971, lowers the voting age to eighteen (18) years old.

### ***Federal Laws***

West Virginia is also subject to certain Federal laws governing the administration of elections, including: The Voting Rights Act of 1965<sup>2</sup>; the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Military and Overseas Voter Empowerment Act (MOVE) of 1986<sup>3</sup>; the Americans with Disabilities Act of 1990<sup>4</sup> (ADA); the National Voter Registration Act of 1993<sup>5</sup> (NVRA); and the Help America Vote Act of 2002<sup>6</sup> (HAVA).

### ***The West Virginia Constitution***

The West Virginia Constitution, adopted in 1872, provides the state’s basic governmental framework and serves as the foundation of state law and civil rights for its citizens.

Article IV of the Constitution outlines the processes for administering elections, oaths by elected officials, and the impeachment of officials. Articles VI and VII provide more specific information on the legislative and executive offices, including qualifications for office and procedures for filling office vacancies.

Throughout this manual, the West Virginia Constitution is cited as “W. Va. Const.” followed by the applicable article and section. The full text of the Constitution is available on the West Virginia Legislature’s website at: [http://www.legis.state.wv.us/WVCODE/WV\\_CON.cfm](http://www.legis.state.wv.us/WVCODE/WV_CON.cfm).

### ***The West Virginia Code***

The majority of West Virginia’s election laws are found in Chapter 3 of the West Virginia Code, commonly referred to as the West Virginia Election Code. This chapter is divided into 12 Articles. However, other chapters and sections in the Code may be relevant to the purposes of this

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<sup>2</sup> 52 U.S.C.A. §10301.

<sup>3</sup> 52 U.S.C.A. §20301.

<sup>4</sup> 52 U.S.C.A. §20101.

<sup>5</sup> 52 U.S.C.A. §20503.

<sup>6</sup> 52 U.S.C.A. §20901.



manual.

References to the West Virginia Code are cited throughout this manual as “W. Va. Code,” followed by the chapter, article, and section number. You may access the full West Virginia Code at <https://code.wvlegislature.gov/>.

### ***The West Virginia Code of State Rules***

The West Virginia Legislature delegates some of its rulemaking ability to offices or commissions, allowing them to create or interpret laws through administrative rules. These rules are often narrower than statutes and are specifically tailored to the agency’s purpose. The process for adopting such rules is prescribed by Chapter 29A, Article 3 of the W. Va. Code and includes legislative committee review to ensure that agencies do not exceed their delegated authority.

The Secretary of State has adopted several administrative rules, which are found in Title 153 of the West Virginia Code of State Rules. These and other relevant rules are cited throughout this manual as “C.S.R.,” followed by the title, series, and rule number. The complete Code of State Rules is available at: <https://apps.sos.wv.gov/adlaw/csr/>.

### ***The Municipal Code and Charters***

Chapter 8 of the W. Va. Code, also known as the Municipal Code of West Virginia, governs the election and administration of municipal government, as well as the processes for drafting, adopting, and amending municipal charters. Once adopted, a city or town charter governs the specific procedures of that municipality including elections, compensation, candidate guidance, and other matters, except where the state Municipal Code takes precedence. Voters and candidates participating in a municipal election should read their municipality’s charter for more detailed and specific information.

### ***Opinions of the West Virginia Attorney General***

According to W. Va. Code §5-3-1, “The [West Virginia Attorney General] shall give written opinions and advice upon questions of law” to certain public officials, when required. However, these opinions are not legally binding and serve only as advisory guidance to assist officials in carrying out their duties.

Any Attorney General cited in this manual will appear as: “[Title of the opinion] W. Va. Att’y Gen. Op.,” followed by the date of the opinion.

Opinions issued since 2013 are available on the West Virginia Attorney General’s website at: <https://ago.wv.gov/publicresources/Attorney%20General%20Opinions/Pages/default.aspx>.

Opinions issued between 1986 and 2012 can be found in the State Register and on the Attorney General’s website at:

<https://ago.wv.gov/publicresources/Attorney%20General%20Opinions/Pages/Opinions-1986-2012.aspx>.

# 2 CHAPTER TWO: Voter Registration

## Eligibility

To be qualified to register to vote in West Virginia, a person must:

- **Be a citizen** of the United States and a legal resident of West Virginia and the county in which they are applying to register;
- **Be at least eighteen (18) years of age;**
  - Or be seventeen (17) years of age if they will be eighteen by the date of the next general election (*see note below for more detail*); and
- **Reside in the state and county** in which they are to vote for at least thirty (30) days before the election to be considered eligible to vote.<sup>7</sup> This thirty (30) day residency requirement also applies to municipal elections.<sup>8</sup>

NOTE: Persons who are seventeen (17) years old but will turn eighteen (18) by the date of the general election may vote in the primary election if they are registered.<sup>9</sup> These individuals will *only* be eligible to vote in the primary until they turn eighteen (18).

### **Residency**

For voting purposes, a “resident” is defined as “any individual who maintains a usual and bona fide place of abode within the corporate limits of a municipality, or within the boundaries of a territory.”<sup>10</sup> The West Virginia Supreme Court of Appeals has further clarified that the term “residence” is synonymous with “domicile.”<sup>11</sup>

Legally, “domicile” is defined as:

- Physical presence in a place; and
- An intention to remain in that place indefinitely.

Neither element alone is enough to *create* a residence, but taken together, they satisfy the residency requirement.

If a person owns multiple homes or places of residence, their “residency” for voting purposes can be examined by a court by using an objective test that considers:

- The physical characteristics of each residence;

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<sup>7</sup> W. Va. Const. Art. 4 §1; W. Va. Code §3-1-3a; W. Va. Code §3-2-2(a).

<sup>8</sup> *State ex. Rel. Peck v. City Council of Montgomery*, 150 W. Va. 580 (1966), relying on language from a previous version of Art. 4 §1, upheld the constitutionality of the requirement that a person “reside in the state for a year and in the county for a period of sixty days” to apply to municipalities. Although the language of this Article has since changed, the case has not been overturned.

<sup>9</sup> W. Va. Code §3-2-2(a) and W. Va. Code §3-1-3.

<sup>10</sup> W. Va. Code §8-1-2(b)(13).

<sup>11</sup> *White v. Manchin*, Syl. Pt. 7, 173 W. Va. 526 (1984).

- The amount of time spent at each;
- The things done at each; and
- Whether there is an intention to return to the original domicile.<sup>12</sup>

### **Disqualification**

A person is *not* qualified to vote if:

- They have been convicted of a felony, treason, or bribery in an election under either state or federal law;
  - Persons disqualified in this way may not register to vote (or continue to vote if already registered) for the entire period of their sentence, including incarceration, probation, and parole.
- They have been declared mentally incompetent by a court of competent jurisdiction.
  - Persons disqualified in this way may not register to vote (or continue to vote if already registered) for as long as the disability continues.<sup>13</sup>

The Clerk of the County Commission (county clerk) is the chief registration authority in his or her county and supervises the deputies and employees under their direction.<sup>14</sup> County clerks are also responsible for administering voter registration services and may establish their own procedures to ensure compliance with federal and state law. County clerks may maintain and store voter registration records in digital format but must follow the records destruction procedures outlined in W. Va. Code § 3-2-29 before destroying any physical records.<sup>15</sup>

County commissions are responsible for allocating resources to support voter registration efforts and for providing clerical assistance in the systematic purging of voter rolls. They also have the authority to summon and examine any person, witness, or piece of evidence related to voter registration, to investigate registration irregularities, and to conduct hearings on such matters.<sup>16</sup>

## **Application Process**

### **The Forms**

The Secretary of State prescribes the forms used for voter registration, with two exceptions:

- The Federal Post Card Application (FPCA), which is issued under UOCAVA; and
- The mail voter registration application, which is prescribed by the Federal Election Commission (FEC).

The Secretary of State's forms may vary depending on the method of application and may include

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<sup>12</sup> *White v. Manchin*, 318 S.E.2d 470, 485-86 (1984); *See also Shaw v. Shaw*, 155 W. Va. 712, 716 (1972).

<sup>13</sup> W. Va. Const. Art. 4 §1; W. Va. Code §3-2-2(b).

<sup>14</sup> W. Va. Code §3-2-4(a).

<sup>15</sup> W. Va. Code §3-2-4(d).

<sup>16</sup> W. Va. Code §3-2-4(b), (c).

procedures for registration through secure electronic systems.<sup>17</sup>

Each voter registration application will include:

- A statement specifying the eligibility requirements for registration and an attestation that the applicant meets each requirement;
- Any notices required for a specific type or use of the application;
- A notice that a voter may vote in a partisan primary only if they have designated a political party on their registration application (unless the political party has chosen to allow otherwise);
- The applicant's driver's license or identification number issued by the Division of Motor Vehicles (DMV). If the applicant does not have a DMV-issued license or ID, they must provide the last four digits of their Social Security number; and
- Any instructions or information necessary to complete the application process.<sup>18</sup>

### ***The Voter's Information***

The applicant must supply the following information under oath:

- The applicant's legal name, including first, middle, and last name;
- The applicant's date of birth, including month, day, and year;
- The applicant's residence address including number, street/route, city, and county of residence; except:
  - If the applicant is eligible to register under UOCAVA, they should provide the address at which they lived before leaving the U.S. or entering uniformed service;
  - If the applicant is homeless (i.e., has no fixed address but remains regularly within the county), they should provide the address of a shelter, assistance center, or family member with whom they have regular contact, subject to approval by the county clerk;
  - If the applicant is enrolled in the Address Confidentiality Program, they should provide the address assigned to them by the Secretary of State.
- The applicant's signature attesting to their eligibility to register to vote and to the truth of the information provided.
  - County clerks may accept electronically submitted signatures that are on file with a state database when the applicant registers using an approved electronic voter registration system.<sup>19</sup>

If any of the above required information is missing, the application will either be returned to the applicant for completion or denied.<sup>20</sup>

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<sup>17</sup> W. Va. Code §3-2-5(a).

<sup>18</sup> W. Va. Code §3-2-5(b).

<sup>19</sup> W. Va. Code §3-2-5(c).

<sup>20</sup> W. Va. Code §3-2-17.

The application form will also request the following information, which is optional and will not result in denial if omitted:

- Indication of whether the application is for a new registration or a change to an existing registration, such as a name or party affiliation change;
- The applicant's choice of political party affiliation, or a declaration of no affiliation;
- The applicant's residence mailing address;
- Last four digits of applicant's Social Security number;
- The applicant's telephone number;
- The applicant's email address;
- The address where the applicant was last registered to vote (for the purpose of canceling or transferring the prior registration); and
- The applicant's gender.<sup>21</sup>

The Secretary of State must submit the specifications for the voter registration application for statewide bidding by July 1 of every odd-numbered year. The bidding contract period begins on September 1 of each odd-numbered year and continues for two (2) consecutive calendar years.<sup>22</sup>

### ***Registering by Mail***

**General Information.** Any eligible citizen may apply to register to vote by mail using the forms described above.<sup>23</sup> The Secretary of State prepares and provides mail-in registration forms to authorized voter registration agencies and organizations for them to make available to the public. Requests for two hundred (200) or more forms are recorded, and the requestor must provide certain contact information.<sup>24</sup>

The county clerk will provide up to four (4) mail-in registration forms to any resident upon request. To the extent possible, the clerk will make registration forms available to organized voter registration programs. West Virginia law grants the Secretary of State and county clerks the authority to limit the distribution of voter registration forms to a reasonable amount for each group requesting them. They will also keep records of all requests for ten (10) or more forms as the Secretary of State does above.<sup>25</sup>

**Process Overview.** Applicants must complete all required information on the registration application and sign under oath, subject to penalty of perjury. No one may change the information on the application except the county clerk, and only upon receipt of a properly documented request.

Completed applications must be mailed or delivered to the county clerk of the applicant's county

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<sup>21</sup> W. Va. Code §3-2-5(d).

<sup>22</sup> W. Va. Code §3-2-5(g).

<sup>23</sup> W. Va. Code §3-2-10(a).

<sup>24</sup> W. Va. Code §3-2-10(b).

<sup>25</sup> W. Va. Code §3-2-10(c).

of residence or to the Secretary of State's Office. If an application is sent to the wrong county, the receiving county clerk must forward it to the appropriate clerk within three (3) days.<sup>26</sup>

Upon receipt of a valid registration application, the county clerk will:

- Attempt to establish whether the applicant's address given is within a municipality and, if so, make the proper entry for municipal residence; and
- Immediately begin the verification process.

**Identification Requirements.** If a person registers by mail and has not previously voted in an election in West Virginia, they must present identification either to the Secretary of State or to their county clerk.

Alternatively:

- If voting in person, the individual may present a valid and current form of identification showing their name and address.
- If voting by mail, the voter must enclose a copy of an identifying document with the ballot.
- If the voter cannot or does not provide identification, they should cast a provisional ballot.<sup>27</sup>

Exemptions from the identification requirement include:

- UOCAVA voters who provide a driver's license number or the last four (4) digits of their Social Security number on the FPCS, allowing the clerk to match the information with an existing record.
- Voters authorized to vote absentee under the Voting Accessibility for the Elderly and Handicapped Act or otherwise qualified under federal law.
- Voters voting absentee for the following reasons:
  - Confinement due to injury, illness, age, immobility, or incarceration that does not disqualify the person from voting;
  - Attendance at a college, university, or similar institution;
  - Being outside the county for the duration of the early voting period under UOCAVA; or
  - Qualification to vote by emergency absentee ballot.<sup>28</sup>

**Updating Voter Registration.** If a registered voter submits a new application to their county clerk to update their address, party affiliation, or legal name, they are not required to vote in person or present identification or proof of age.<sup>29</sup>

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<sup>26</sup> W. Va. Code §3-2-10(e).

<sup>27</sup> W. Va. Code §3-2-10(g).

<sup>28</sup> W. Va. Code §3-3-1(b).

<sup>29</sup> W. Va. Code §3-2-10(j).

### ***Voter Registration Service Agencies***

The Secretary of State is responsible for reviewing all state programs that offer voter registration services and operate with state funds, in conjunction with a designated representative from the appropriate state agencies, every even-numbered year. The Secretary of State will establish emergency rules to designate specific programs that are required to provide voter registration services under the NVRA.<sup>30</sup>

Under the W. Va. Code, the following state agencies are required to offer voter registration services as part of their standard operations:

- State agencies administering public assistance programs, including Aid to Families with Dependent Children (AFDC), the Women, Infants, and Children (WIC), and Medicaid;
- State-funded agencies primarily engaged in providing services to persons with disabilities;
- County marriage license offices;
- Armed services recruitment offices; and
- The Department of Revenue (if it includes a form that authorizes the department to request a voter registration form on behalf of the applicant).<sup>31</sup>

Each agency required to offer voter registration services must designate an employee to serve as the state supervisor to administer voter registration services within the agency. This supervisor is responsible for coordinating with the Secretary of State and designating an additional employee to coordinate voter registration efforts and oversee the proper handling of applications and reporting requirements.

Any person providing voter registration services may not:

- Seek to influence an applicant's political preference or party registration;
- Display political preference or party allegiance to any applicant;
- Make any statement to an applicant or take any action to discourage the applicant from registering to vote.; or
- Make any statement or take any action that may lead the applicant to believe that a decision to register or not register will affect the availability of services or benefits.<sup>32</sup>

### ***Federal Post Card Application***

When a FPCA is received along with an absentee ballot request from a UOCAVA-eligible voter, the official designated to supervise absentee voting will:

- Enter the applicant's name in the permanent absentee voter record for each election for which the voter has applied, photocopy the application, and store a separate copy;
- Determine whether the applicant is registered to vote at the address listed on the

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<sup>30</sup> W. Va. Code §3-2-13(c), (d).

<sup>31</sup> W. Va. Code §3-2-13(b).

<sup>32</sup> W. Va. Code §3-2-13(i).

application;

- If the applicant is not registered or is registered at a different address, the official must deliver the original FPCA to the county clerk to be processed as a voter registration application;
- If the FPCA is received after the close of voter registration for the upcoming election, the official must challenge the absentee ballot for that election; and
- If the listed address is verified as correct, mail the application and ballot on the first day they both become available.<sup>33</sup>

## **Processing Voter Registration Forms**

### ***The County Clerk***

The county clerk must provide voter registration services during all regular business hours. An eligible voter who wants to apply in person may complete a voter registration application using the prescribed form and sign the required oath in the presence of the clerk or a deputy clerk. The applicant must provide valid identification and proof of age prior to voting.

The clerk must attempt to establish whether the residence address provided is located within an incorporated municipality and, if so, must properly record that information in the voter's records.

Upon receipt of the completed application, the clerk will provide the applicant with notice of the procedures for residence verification – unless the applicant presents a current driver's license or other state-issued identification card that contains the same residence listed on the registration application. In that case, the clerk will issue a receipt of registration.<sup>34</sup>

### ***Registration Outreach Services – Temporary and Volunteer Registrars***

Registration outreach services may be provided at locations outside of the county clerk's office by one or more deputy clerks or by temporary or volunteer registrars.

Temporary or volunteer registrars must meet the same eligibility requirements as election officials.<sup>35</sup> They serve in teams composed of two (2) persons from opposite political parties, receive training and supervision from the county clerk, and must take an oath to perform the duties of the office before beginning work.

Eligibility to serve as a registrar may be suspended for:

- Failure to appear at the required time and place or to perform registrar duties;
- Alteration or destruction of a voter registration application;
- Improper influence over a voter's choice of party affiliation or other improper interference or intimidation related to the voter's decision to register or not;

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<sup>33</sup> W. Va. Code §3-3-5a(3).

<sup>34</sup> W. Va. Code §3-2-7.

<sup>35</sup> See "Poll Workers" on page 29.



- Being under the influence of alcohol or drugs; or
- Gambling or wagering on any election.<sup>36</sup>

**Appointment.** When appointing temporary registrars, the county clerk must appoint an equal number from each of the two major political parties in the state. The county commission notifies each county executive committee in writing, specifying the number of registrars to be appointed, the schedule of registration activities, and the deadline for submitting nominations, which must be at least twenty-eight (28) days after the notice date.

**Nomination.** Each county executive committee may nominate the number of persons needed to serve as registrars and must submit nominations in writing to the county commission by the specified deadline. The county clerk will notify the nominated individuals, and if anyone fails to appear, the clerk will fill the vacancy with a qualified person from the same political party.

**Compensation.** Temporary registrars will be compensated at a rate not less than the federal minimum wage and will be reimbursed for mileage traveled between the courthouse and registration sites.<sup>37</sup> Volunteer registrars serve without compensation, and the county clerk must inform the county commission of the names and party affiliations of all volunteers.<sup>38</sup>

**Temporary Registration Offices/Locations.** The county clerk may establish temporary registration offices to provide voter registration services to residents. The clerk must file a list of the scheduled times and locations of these offices with the county commission at least fourteen (14) days before opening and should advertise the schedule via radio, television, and newspapers serving the county.

**High School Registration Services.** The county clerk *shall* establish an approved voter registration program for eligible high school students at each high school located in the county. No later than forty-five (45) days before a statewide primary election held during the school year, the clerk shall conduct the program at an appropriate time. The program must allow students to register in person and present identification at their high school. Official school records will be accepted as proof of identification and age for eligible students.<sup>39</sup>

**Door-to-Door Registration when Precinct Boundaries Change.** The county clerk or temporary registrars may conduct door-to-door registration in areas where voters must update their registrations due to precinct boundary changes. They may register, update, or transfer voter registrations in those areas. If they find a voter has moved from their registered address, the clerk shall challenge that voter's registration.<sup>40</sup>

All persons conducting registration outreach must follow the instructions for registration found

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<sup>36</sup> W. Va. Code §3-2-9(a), (b).

<sup>37</sup> W. Va. Code §3-2-9(d).

<sup>38</sup> W. Va. Code §3-2-9(e).

<sup>39</sup> W. Va. Code §3-2-8(b).

<sup>40</sup> W. Va. Code §3-2-8(c).

in W. Va. Code §3-2-7 and the procedures described above in the “The County Clerk” section.

### ***Voter Registration Service Agencies***

On July 1 of each odd-numbered year, after the Secretary of State designates an agency as one required to include voter registration services as part of its operations, that agency must:

- Distribute a declination form<sup>41</sup> and a voter registration application with each application for service, assistance, recertification, renewal, or change of address form related to the agency;
- Provide to each applicant who wishes to register to vote with the same degree of assistance offered for the agency’s other forms;
- Accept completed voter registration applications and forward them to the Secretary of State within five (5) days of receipt;
- Accept declination forms and retain or forward them as prescribed by the Secretary of State;
- Provide, upon request by an applicant or the person assisting them, a reasonable number of mail registration application forms for use by other eligible persons residing with the applicant; and
- Make any required reports.<sup>42</sup>

Any voter who checks “no,” fails to check a box on the declination form, fails to sign the voter registration application, or fails to return the application to the agency will be considered to have declined to register.<sup>43</sup>

When the Secretary of State receives forms from an agency, completed and signed applications are sent to the appropriate county clerk within five (5) days. Any unsigned forms will be removed and filed.

Any qualified voter who submits a registration application in person at an agency and presents identification and proof of age at that time or previously will not be required to vote in person or present identification again for their first vote. However, If the application is submitted by mail or delivered by a third party, the voter will be required to vote in person and present identification to validate their registration.<sup>44</sup>

When a voter appears in person to apply for a marriage license, they will be presented with a voter registration application. If the voter does not intend to change their legal name or residence upon marriage, they may immediately apply to register or update their registration. Applications completed this way are forwarded directly to the county clerk’s registration office.

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<sup>41</sup> A form sent by the Secretary of State to agencies with voter registration services that allows applicants to indicate whether he or she would like to register to vote.

<sup>42</sup> W. Va. Code §3-2-14(c).

<sup>43</sup> W. Va. Code §3-2-14(d).

<sup>44</sup> W. Va. Code §3-2-14(g).

If the applicant does intend to change their legal name or residence upon marriage, as well as register to vote, they will be given a mail registration card to use after the name or address change has occurred.<sup>45</sup>

### ***County Clerk Procedures for Voter Registration Processing***

When the county clerk receives a voter registration application, he or she must determine if the application is complete and whether the applicant is eligible to register to vote in that county. If either of these criteria is not met, the clerk will deny the application (described below).

If the application is complete and submitted by **an eligible voter not previously registered in the county, not listed in the active voter registration files within the preceding calendar year, and not presenting a driver's license containing the residence address**, the clerk must mail a verification notice to the address provided on the application (unless the applicant qualifies as a UOCAVA or homeless voter and provides a local address).<sup>46</sup> This notice:

- Must state the purpose of the procedure, that no further action is required from the applicant, and that a notice of registration disposition will be mailed after the ten (10) day return period;
- If the notice is not returned as undeliverable within ten (10) days, the application will be accepted and entered into the active voter registration file, and a registration receipt will be mailed, designating the voter's assigned precinct;
- If returned as undeliverable within ten (10) days, the clerk will compare the address on the application with the return address on the envelope. If there is a discrepancy, the clerk will send a second notice to the correct address. If there is no discrepancy, the application will be denied, and a notice of denial will be mailed;
- If the verification notice is returned as undeliverable after the registration has already been accepted, the clerk will start the confirmation procedure.<sup>47</sup>

If the application is complete and submitted by **an eligible voter currently registered in the county or in the active voter registration file**, the clerk will send a notice of disposition along with:

- A new voter registration receipt, if the application involves a change of name, address, party affiliation, reinstatement, or other correction; and
- A notification that no changes are needed if the voter still resides at the same address and has the same legal name.

If the notice of disposition is returned as undeliverable after the registration has been accepted,

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<sup>45</sup> W. Va. Code §3-2-15.

<sup>46</sup> The mailing address will not be included on the notice if it appears to identify a distinctly different location from the residence address.

<sup>47</sup> W. Va. Code §3-2-16(b).

the clerk will seek confirmation.<sup>48</sup>

If an application indicates that the applicant's previous address was in another county or state, the clerk will notify the appropriate clerk or registrar in that jurisdiction to cancel the prior registration.<sup>49</sup>

### **Denial**

The county clerk will deny a voter registration application if, based on the application or official documentation of eligibility, any of the following conditions apply:

- The applicant is not eligible to register in the county at the time the application is received;<sup>50</sup>
- The application is incomplete; or
- The verification notice is returned as undeliverable at the address provided by the voter.<sup>51</sup>

When the clerk determines the application must be denied, he or she will send a notice to the applicant stating that the application has been denied and explaining the reason(s) for the denial.

- If the application is denied due to incompleteness, the clerk will inform the voter of the right to reapply and enclose a new application form.
- If the application is denied because the verification notice was returned as undeliverable, the clerk will inform the voter of the to present proof of residence to validate the address.
- If the application is denied due to ineligibility, the notice will include a summary of the eligibility requirements for registration and the right to request an appeal.<sup>52</sup>

Any applicant who is denied due to ineligibility or failure to provide proof of residence may submit a written request for reconsideration and present evidence of eligibility. The county clerk must review the request and issue a written decision within fourteen (14) days.

### **Appeal**

If an application is denied upon reconsideration, the applicant may submit a written request for a hearing before the county commission. The county commission must schedule and conduct the hearing within thirty (30) days of receiving the request and must issue a written decision within fifteen (15) days after the hearing.

An applicant may appeal the county commission's decision to the circuit court, which will only consider the record presented to the county commission, as authorized by the county clerk. The circuit court may affirm the decision, reverse the decision, or remand the matter to the county

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<sup>48</sup> W. Va. Code §3-2-16(c).

<sup>49</sup> W. Va. Code §3-2-16(d).

<sup>50</sup> W. Va. Code §3-2-2; See "Eligibility" on page 4.

<sup>51</sup> W. Va. Code §3-2-17(a).

<sup>52</sup> W. Va. Code §3-2-17(b).

commission for further hearing.

Any party to a circuit court appeal may then appeal to the West Virginia Supreme Court of Appeals within thirty days of the circuit court's final order. The Supreme Court may grant or deny the appeal at its discretion and has jurisdiction to review and decide the matter based on the record before the circuit court.

It is the duty of both the circuit court and Supreme Court of Appeals to expedite cases involving voter registration and election procedures, and to hold as many sessions as necessary to resolve such cases promptly.<sup>53</sup>

## Deadlines

Voter registration for each election closes on the twenty-first (21<sup>st</sup>) day before the election, or on the next day that is not a Saturday, Sunday, or legal holiday.

An application for voter registration, change, or transfer of registration will be effective for the next election if:

- The application contains the applicant's legal name, birth date, signature, and residence address (unless the applicant qualifies under UOCAVA, is homeless, or is participating in Address Confidentiality Program);
- The application is received by the appropriate county clerk before the close of registration;
  - If mailed, it must be addressed to the appropriate county clerk and postmarked no later than the close of registration date.
    - If the postmark is missing or ineligible, the application will be presumed timely if received by the clerk within three (3) days prior to the close of registration.
  - If accepted by a motor vehicle licensing agency, it must be received by that agency on or before the close of registration.
  - If accepted through a registration outreach program, it must be reviewed by the clerk, deputy clerk, or registrar on or before the registration deadline.
  - If accepted through an approved electronic voter registration system, it must be received by the county clerk no later than the close of registration.
- The verification notice is mailed and not returned as undeliverable.<sup>54</sup>

**Deadline Exceptions.** There are exceptions to the twenty-one (21) day deadline for certain individuals who may register in person at the county clerk's office up to the day of the election. These individuals include:

- Members of a uniformed service of the United States on active duty;
- Members of a uniformed service discharged within sixty (60) days before the election;

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<sup>53</sup> W. Va. Code §3-2-17(d), (e), (f), (g).

<sup>54</sup> W. Va. Code §3-2-6.

- Members of the United States Merchant Marines;
- Individuals residing outside of the U.S. due to employment supporting national security functions or purposes, who present documentation of such employment;
- Spouses or dependents residing with one of the above persons.<sup>55</sup>

These exceptions apply *only* to applicants who are otherwise qualified to vote and who are ordinarily absent from their residence county, or who have recently returned and resumed residence within the twenty-one (21) day period before the election.

**Voters who register under these exceptions after the deadline must cast a provisional ballot.** The provisional ballot will be counted unless the county clerk determines the voter does not meet the eligibility requirements.

### **Inputting into the Statewide Voter Registration System (SVRS)**

The Secretary of State is required to implement and maintain a statewide, centralized, computerized voter registration database of legally registered voters. This system, known as the Statewide Voter Registration System (SVRS), contains the name, registration status, voting history, and a unique voter ID number. The SVRS allows the Secretary of State, county clerks, authorized designees to electronically access and enter voter information.<sup>56</sup>

Both the Secretary of State and county clerks must perform maintenance on the SVRS in order to remove the names of those who are no longer qualified to vote in accordance with the NVRA.<sup>57</sup> Under West Virginia law, each registered voter must appear in the database, and only voters who: submit a written request for removal, are deceased, are registered more than once, or are no longer eligible to vote, may be removed from the SVRS.<sup>58</sup>

The Secretary of State must perform any maintenance necessary to ensure that voter registration records remain accurate and up to date, including:

- Creating a file maintenance system that makes a “reasonable effort” to remove registrants who are no longer eligible to vote.<sup>59</sup> If a registrant: (1) fails to respond to a confirmation notice; (2) does not update their address or registration; (3) and has not voted in any election during the two most recent federal general election cycles, their registration will be cancelled;
- Ensuring removal of voters who have: (1) moved out of state or (2) become deceased in another state, through participation in interstate maintenance programs; and
- Establishing safeguards to ensure that eligible voters are not removed from the official

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<sup>55</sup> W. Va. Code §3-2-6a.

<sup>56</sup> W. Va. Code §3-2-4a(a).

<sup>57</sup> 52 U.S.C.A. §20501.

<sup>58</sup> W. Va. Code §3-2-4a(c).

<sup>59</sup> See “Canceling Voter Registrations” on page 20.

list.<sup>60</sup>

### ***Statewide Maintenance***

Each county clerk must maintain voter registration information in the SVRS and keep a voter registration record book, which logs all actions affecting the programming or records in the system performed by the clerk or anyone under their supervision.<sup>61</sup>

The county clerk is responsible for appointing and managing all personnel who are authorized to update voter registration information in the SVRS.<sup>62</sup>

Activities, records, and information entered into the SVRS include:

- Information provided on voter registration applications;
- Maintenance of registration and voting records;
- Data related to the conduct of elections; and
- Use of records for statistical purposes.<sup>63</sup>

All entries must be expressly authorized by law, and each entry that affects the status of a voter registration must be based on information contained in the original voter registration record.

With respect to the SVRS voter registration records, the county clerk is responsible for maintaining:

- Active and inactive voter registration records;
- Confirmation pending records;
- Canceled voter registration records;
- Pending application records; and
- Rejected application records.<sup>64</sup>

Upon receipt of a completed voter registration application, the clerk must: (1) enter the information into the SVRS and mark the record as pending and (2) upon completing the verification process, update the record with the result.

The county clerk must promptly make necessary updates in the SVRS upon receipt of:

- A completed voter registration application;
- Written confirmation from a voter of a change in:
  - Address;
  - Legal name;
  - Party affiliation; or

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<sup>60</sup> W. Va. Code §3-2-4a(e).

<sup>61</sup> W. Va. Code §3-2-21(a).

<sup>62</sup> W. Va. Code §3-2-21(b).

<sup>63</sup> W. Va. Code §3-2-21(c).

<sup>64</sup> W. Va. Code §3-2-21(e).

- Other correction;
- A notice of death; or
- A request for cancellation.<sup>65</sup>

In addition, the county clerk must enter voting records from each election into the SVRS within eighty (80) days after each election.<sup>66</sup>

## **DMV Registration**

The Secretary of State and the Commissioner of the DMV must coordinate to match and transfer information from the DMV database to the SVRS in order to verify the accuracy of voter registration application information.

For each person applying for voter registration, the DMV will share the following with the Secretary of State:

- Full name;
- Residence and mailing address;
- Driver's license or state identification number;
- Last four digits of the Social Security number;
- Date of birth;
- License or identification issuance and expiration dates; and
- Current record status.

This information is used by the Secretary of State for in-state voter list maintenance and for interstate list maintenance under authorized data-sharing agreements.<sup>67</sup>

The DMV is required to collect the following information from each license applicant:

- Full name;
- Date of birth;
- Residence address and mailing address, if different;
- Electronic signature;
- Telephone number, if available;
- Email address, if available;
- Political party affiliation, if any;
- Driver's license number;
- Last four digits of the Social Security number;
- Attestation that the applicant meets all voter eligibility requirements;
- Whether the applicant affirmatively declines to register to vote at the DMV;
- Date of application; and

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<sup>65</sup> W. Va. Code §3-2-21(f), (g), (h), (i), (j).

<sup>66</sup> W. Va. Code §3-2-18(e).

<sup>67</sup> W. Va. Code §3-2-4a(g)(2).



- Any other information specified by adopted rules.<sup>68</sup>

If the applicant *does not* affirmatively decline to register to vote or to update their registration while at the DMV, the DMV will release all of the above information to the Secretary of State, who shall in turn forward the information to the appropriate clerk county clerk to process the newly registered or updated information.<sup>69</sup>

If the applicant *does* affirmatively decline, the DMV will only release to the Secretary of State their full name, residence address, date of birth, electronic signature, and a notification that the applicant affirmatively declined to the Secretary of State to facilitate any future attempt by the applicant to register. This information will be retained to assist with any future registration attempts by the applicant.

Applicants who register by mail or have their applications delivered by a third-party using a DMV form must make their first vote in person, with the same identification as required by mail registration, as discussed earlier. **If the application only updates the registration, presentation of identification is not necessary.**<sup>70</sup>

Applicants who register in person at a DMV location and provide proof of age and valid identification at that time, are not required to make their first votes in person.<sup>71</sup>

**Registration and/or Address Changes.** If a person submits a voter registration or updates a previous registration, he or she thereby authorizes the cancellation of any registrations in other counties or states where he or she was previously registered.<sup>72</sup> A change of address submitted for driver licensing also serves as a change of address for voter registration, provided the applicant is notified and gives written consent.<sup>73</sup>

Completed applications received by the DMV must be forwarded to the Secretary of State within five (5) days of receipt. The Secretary of State then has five (5) days to remove and file any unsigned forms and forward completed, signed applications to the appropriate county clerk.<sup>74</sup>

If a person wishes to cancel a registration made through the DMV (or elsewhere), he or she may do so at any time.<sup>75</sup>

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<sup>68</sup> W. Va. Code §3-2-11(a).

<sup>69</sup> W. Va. Code §3-2-11(b).

<sup>70</sup> W. Va. Code §3-2-11(f).

<sup>71</sup> W. Va. Code §3-2-11(e).

<sup>72</sup> W. Va. Code §3-2-11(g).

<sup>73</sup> W. Va. Code §3-2-11(h).

<sup>74</sup> W. Va. Code §3-2-11(i).

<sup>75</sup> W. Va. Code §3-2-11(l).

## Canceling Voter Registrations

### *The Duty to Purge*

The Secretary of State and county clerks of the state are required under the NVRA to maintain and occasionally “purge” the voter rolls of inactive voters. County clerks are responsible for cancelling a voter’s registration under the following circumstances:

- Upon the voter’s death, as verified by one of the following:
  - A death certificate issued by the Registrar of Vital Statistics or notice from a federal agency that receives and utilizes state vital statistics information (*e.g.* the Social Security Administration’s Death Master File);
  - A notice from the Secretary of State, based on records from the county and registrar, indicating the person is deceased;
  - An obituary or other published writing clearly identifying the deceased by name, residence, and age corresponding to the voter record; or
  - An affidavit signed by the voter’s parent, legal guardian, child, sibling, or spouse, providing the name of the voter and the date and place of death.
- Upon notice from a state or federal court that the individual has been convicted of treason or bribery in an election;
- Upon receipt of a notice from the appropriate court that the voter has been adjudicated mentally incompetent;
- Upon receipt of a written request from the voter to cancel their registration;
- Upon confirmation by the voter of a change of address to a location outside the county;
- Upon notice from a voter registrar in another jurisdiction (county or state) that a voter registration application has been received;
- Upon notice from the Secretary of State that a voter registration was accepted in another county or state after the original registration date in the first county, found by comparison; or
- Upon the voter’s failure to respond and produce evidence of continued eligibility following the challenge of that voter’s registration.<sup>76</sup>

The Secretary of State also has the authority to propose legislative rules regarding the maintenance of voter registration records and may implement changes and cancellations to voter registrations accordingly.<sup>77</sup>

### *The Systematic Purging System*

No earlier than October 1<sup>st</sup> of each odd-numbered year, county clerks must begin the systematic purging of ineligible voter registration files, and they must complete the process by February 1<sup>st</sup> of the following year. When complete, clerks must transmit a certification to the Secretary of

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<sup>76</sup> W. Va. Code §3-2-23.

<sup>77</sup> W. Va. Code §3-2-23a.

State by February 15<sup>th</sup> of that year, confirming that the systematic purging program has been completed and that all ineligible voter registrations have been canceled.<sup>78</sup>

Based on a comparison of voter registration data records, the Secretary of State will prepare a list for each county identifying voters in who appear in the SVRS to have registered or updated their registration in another county. This list is sent to the appropriate county clerk to start the confirmation procedure outlined in W. Va. Code §3-2-26.<sup>79</sup>

The Secretary of State may also compare voter registration records from the DMV, the Registrar of Vital Statistics, or any other state agency that maintains records of state residents, provided the comparison process is practical and the agency agrees to participate.<sup>80</sup>

In addition, the Secretary of State will compare voter registration data with change-of-address information compiled by the United States Postal Service (USPS) and return matches of voter registration records to each county.<sup>81</sup> If the new address is within the same county, the county clerk will update the voter's record and assign the correct precinct.

If it appears from the USPS records that a voter has moved from the residence address in the registration, the clerk will follow the confirmation notice procedure discussed below by mailing one (1) notice of confirmation no later than December 31<sup>st</sup> – either to the new address (if available) or to the old address.<sup>82</sup> The clerk will then enter the voter's new address in the SVRS.

Any voter who does not respond to the confirmation notice or update their registration by February 1<sup>st</sup> following the completion of the program will be designated as “inactive” in the SVRS. Inactive voters must affirm their current residence address on a form (usually in the poll book) when appearing at the polls to vote.

Counties using the USPS change-of-address information will also mail confirmation notices to voters *not* identified as potentially ineligible but who have not updated their voter registration or voted during the past two (2) calendar years – commonly referred to as “idle voters”.<sup>83</sup>

### **Confirmation Notices**

A confirmation notice is sent to a voter when it appears that the voter may have moved or become ineligible to vote. The county clerk will mail a confirmation notice only when:

- A verification notice is returned as undeliverable;<sup>84</sup>
- A notice that voter registration was denied is returned as undeliverable;
- The clerk receives information from the systematic voter purging program;

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<sup>78</sup> W. Va. Code §3-2-25(a).

<sup>79</sup> W. Va. Code §3-2-25(b).

<sup>80</sup> W. Va. Code §3-2-25(c).

<sup>81</sup> 42 U.S.C. §1973gg (now 52 U.S.C.A. §20507).

<sup>82</sup> W. Va. Code §3-2-25(e).

<sup>83</sup> W. Va. Code §3-2-25(j).

<sup>84</sup> W. Va. Code §3-2-16.

- The clerk receives information from the DMV;
- The clerk receives information from the USPS; or
- A notice of address change is received from an authorized list maintenance vendor.<sup>85</sup>

The clerk sends confirmation notices via first-class, forwardable mail and includes a pre-addressed, postage prepaid (or business reply) return card on which the voter may write their current address. The confirmation notice must conform to the requirements of the NVRA.<sup>86</sup>

When the voter returns the completed and signed confirmation notice, the county clerk will either update the voter registration – confirming the current address or entering any change of name or address requested by the voter – or cancel the registration if the voter confirms that they have moved out of the county or state.<sup>87</sup>

If the confirmation is returned as undeliverable, the clerk may send a second notice to the voter's former address if the first notice was sent to a new address provided by the USPS. If no second address is provided or if the second notice is also returned as undeliverable, the clerk will designate the registration as inactive.<sup>88</sup>

If the clerk does not receive a response to the notice by February 1<sup>st</sup>, the clerk will designate the voter's registration as inactive.<sup>89</sup>

Inactive voter registrations will be returned to active status upon any affirmation of address accuracy, any voter-initiated update to the registration, or if the voter votes in any election while they remain on the inactive list.<sup>90</sup>

The county clerk will cancel the registration of inactive voters who:

- Have not responded to confirmation notices after the required time period;
- Have not otherwise updated their voter registrations; and
- Have not voted in *any* state, county, or municipal election held within the county from the date of the notice through the day after the second general election for federal office following the notice date.<sup>91</sup>

No registration record may be removed from a municipal registration record unless the registration is lawfully transferred or canceled in both county and municipal records.<sup>92</sup>

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<sup>85</sup> Consistent with the notice of confirmation procedure.

<sup>86</sup> 42 U.S.C. §1973gg §8(d)(2) (now 52 U.S.C. §20507).

<sup>87</sup> W. Va. Code §3-2-27(a).

<sup>88</sup> W. Va. Code §3-2-27(b).

<sup>89</sup> W. Va. Code §3-2-27(c).

<sup>90</sup> W. Va. Code §3-2-27(d).

<sup>91</sup> W. Va. Code §3-2-27(e).

<sup>92</sup> W. Va. Code §3-2-19(a)(3).

## Publication and Correction of Voter Lists

The Secretary of State has general supervision over voter registration records and has the authority to require reports and investigate violations to ensure proper conduct of voter registration throughout the state and its subdivisions.

If a county clerk fails to conduct voter registration list maintenance, the Secretary of State may issue written notice to the clerk. If the clerk does not complete the maintenance within ninety (90) days of receiving the notice, the Secretary of State may notify the county and proceed to make the necessary changes after the required period has passed.<sup>93</sup>

### *Correcting the Voter Record*

If a voter changes residences within the same county, he or she should file a request for a change of address by completing, signing, and submitting one of the following:

- A change of address form through the office of the county clerk or any voter registration outreach program;
- A state or federal mail registration form;
- A change of address form for driver licensing purposes;
- A change of address form for voter registration purposes at any authorized voter registration agency;
- A confirmation of change of address form received as part of the notice of confirmation procedure;<sup>94</sup> or
- An affidavit of change of address at the polling place of the precinct in which the new residence is located on Election Day.<sup>95</sup>

Once the county clerk receives a request for a change of address, he or she will update the voter registration record with the county, precinct number, and municipal precinct number (if applicable), and issue notice of acknowledgement to the new address.

**Updating Address on Election Day.** A voter who has changed residences may update her or his address at the polling place on Election Day. If the new address is in the same precinct as the previous address, then the voter may vote without challenge.

If the new address is in a different precinct, the voter may still update his or her address at the polling place but must vote a provisional ballot. If the voter's registration record is found in the county and no other challenges exist, the provisional ballot will be counted at canvass.<sup>96</sup>

If the county clerk receives notice from the USPS or another voter registration records comparison program that a voter has moved residences within the county, the clerk will update

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<sup>93</sup> W. Va. Code §3-2-3.

<sup>94</sup> For notice of confirmation procedure, see W. Va. Code §3-2-25 through §3-2-27.

<sup>95</sup> W. Va. Code §3-2-22(a).

<sup>96</sup> W. Va. Code §3-2-31.

the change of address into the voter registration record and follow the confirmation notice procedures described above.<sup>97</sup>

Any voter changing his or her legal name, either through marriage or by order of a circuit court, may file a request for change of address by signing, completing, and submitting:

- Any voter registration application form; or
- An affidavit of change of legal name at the polling place on Election Day.<sup>98</sup>

Upon receiving the request for a change of legal name, the clerk must update the voter registration record and issue an acknowledgement notice.

A voter who wishes to change political party affiliation must do so before the deadline for the close of voter registration by submitting a completed voter registration application. Upon receipt, the clerk will update the record and issue notice to the voter.<sup>99</sup>

If a voter identifies an error on his or her voter registration, the voter may request a correction by completing, signing, and submitting any voter registration form, or by filing an affidavit requesting the correction at the polling place on Election Day.

If a voter asserts at the polls on a primary election day that the party affiliation listed on their registration is incorrect, the voter may cast a provisional ballot for the desired political party. The ballot will be counted at canvass if the original registration record contains the appropriate political designation filed by the close of registration for the primary election.<sup>100</sup>

## **Challenges to the Right to Vote**

The registration of any voter may be challenged by:

- The county clerk, Secretary of State, or any registrar of the county;
- The chairperson of any political party committee; or
- Any voter who appears in person at the clerk's office.

Any person who challenges a voter's registration must complete a form providing the name and address of the voter and the reason for the challenge. The challenge will be filed as a matter of record with the county clerk.<sup>101</sup>

When the county clerk receives a challenge, he or she will mail a notice of challenge to the voter whose registration is being challenged. The notice should state that the voter's registration will be canceled if the voter does not appear in person at the clerk's office with evidence of eligibility

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<sup>97</sup> W. Va. Code §3-2-22(c), W. Va. Code §3-2-25 through §3-2-27; see "Canceling Voter Registrations" on page 20.

<sup>98</sup> W. Va. Code §3-2-22(d).

<sup>99</sup> W. Va. Code §3-2-22(f).

<sup>100</sup> W. Va. Code §3-2-22(g).

<sup>101</sup> W. Va. Code §3-2-28(a).

within thirty (30) days of the notice's mailing date.<sup>102</sup>

If the notice of challenge is returned as undeliverable at the registration address, or if the challenged voter does not appear at the clerk's office within thirty (30) days, the registration will be immediately canceled.

If the challenged voter appears within thirty (30) days and presents evidence of eligibility, the clerk will determine the voter's eligibility in the same manner as in any other registration case.

If the reason for the challenge is that the voter does not reside at the address listed on the registration, and the voter presents evidence of residence at a different address within the county, the clerk will treat the matter as a request for change of address and remove the challenge.<sup>103</sup>

## **Management of Public Records**

### ***Retention of Records***

All original paper registration records will remain in the custody of the county clerk. However, if stored electronically, all original registration records will remain in the SVRS.<sup>104</sup>

Original voter registration records will be kept for a minimum of five (5) years following the last recorded activity associated with the record. Duplicate applications that do not alter existing registrations must be retained for at least two (2) years.<sup>105</sup>

Before a county clerk orders the destruction of original voter registration applications or registration cards for registrations that have been canceled for at least five (5) years, the clerk must first notify the Secretary of State of the intent to destroy the records. The Secretary of State may decide within ninety (90) days whether those records should instead be preserved by microfilm or "other permanent data storage," and may have those records processed at state expense.<sup>106</sup>

Original registration records may be destroyed after the required retention period if an exact digital or facsimile copy of the records is made, with prior approval from the Secretary of the State.<sup>107</sup>

Canceled and rejected registration records will be maintained for five (5) years before being removed from the SVRS and destroyed.<sup>108</sup>

No record may be removed from the SVRS or the custody of a county clerk except for use in an

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<sup>102</sup> W. Va. Code §3-2-28(b).

<sup>103</sup> W. Va. Code §3-2-28(c).

<sup>104</sup> W. Va. Code §3-2-29(a).

<sup>105</sup> W. Va. Code §3-2-29(b).

<sup>106</sup> W. Va. Code §3-2-29(c).

<sup>107</sup> W. Va. Code §3-2-29(b).

<sup>108</sup> W. Va. Code §3-2-29(d).

election, by order of a court of record, or in compliance with a subpoena issued by the Secretary of State.<sup>109</sup>

### ***Maintenance in Municipal Elections***

In municipal elections, registrations of both active and inactive voters will be maintained by the county clerks, who are responsible for preparing poll books or voter lists for use in elections where either:

- County and municipal precinct boundaries are the same, and all voters in the precinct are entitled to vote in all state, county, and municipal elections held in that precinct; or
- The registration records of municipal voters within a county precinct are separated and maintained in a separate section for municipalities for that precinct, which may be used to compile a complete set of registration records for the municipal election precinct.<sup>110</sup>

A municipality may request to keep precinct books separate from the county in cases where the municipal precincts or wards divide county precincts, and the use of county poll books is impractical. To ensure the integrity of the registration process, the municipal clerk or recorder should collaborate with the county clerk to conduct regular audits of voter registration records.<sup>111</sup>

Note that per SB 50 of the 2025 regular legislative session, municipal elections will be held in concurrence with statewide elections beginning July 1, 2032.

Within thirty (30) days of any annexation order or change in street names or numbers, the governing body of the municipality must file with the county clerk a certified, current official municipal boundary map, along with a list of street numbers located within the municipality. The county clerk will use this information to determine whether a voter's address falls within the boundaries of the municipality.<sup>112</sup>

### ***Public Inspection***

Any person may examine the active, inactive, rejected, and canceled voter registration records during the county clerk's regular office hours. Any person may view voter record information in either printed form or a read-only data format on a computer set aside for public use.

Voter information available for public examination may include all publicly available registration and voting information. **Private information not subject to public examination includes:**

- Phone numbers;
- Email addresses;

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<sup>109</sup> W. Va. Code §3-2-29(a).

<sup>110</sup> W. Va. Code §3-2-19(a)(1).

<sup>111</sup> See generally W. Va. Code §3-2-19.

<sup>112</sup> W. Va. Code §3-2-19(b).



- Social Security numbers; and
- Driver's license or state identification numbers.<sup>113</sup>

The county clerk will provide, upon request, printed copies of voter lists for each precinct. These lists will include only the information permitted for public inspection.

The clerk must establish a written policy, to be posted in public view, listing the options for sorting the viewable list of voters. This policy must include *at least*:

- Voter name;
- Residence address;
- Political party affiliation;
- Registrant status;
- Available formats of the lists; and
- Times at which the lists will be prepared.

All such county policies County policies must be filed with the Secretary of State no later than January 1<sup>st</sup> of every even-numbered year.<sup>114</sup>

### ***Purchase of Voter Registration Lists***

Lists of registered voters may be obtained from the county clerk for noncommercial purposes, either in data format on a disk or as a printed list, at a cost of one cent (\$0.01) per name. Any information provided will include only the information allowed for public examination.<sup>115</sup>

Any fees collected for voter information requests are deposited into a separate account and used to offset the costs of preparing voter lists. After deducting those costs, any remaining funds are deposited into the State Election Fund.<sup>116</sup>

The Secretary of State also makes voter lists available for sale that include only information allowed for public examination. The following fees apply:

- \$1,000 for an Election Cycle Subscription Service;
- \$500 for a Statewide Voter Registration List;
- \$500 for a Master Voter History List Export;
- \$200 for a Statewide Early Voters List;
- \$200 for a Statewide Absentee Requests List;
- \$200 for a Statewide Absentee Received List; and
- The current hourly rate for a Partial Voter Registration List, Voter History List, or Complex Research Queries.<sup>117</sup>

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<sup>113</sup> W. Va. Code §3-2-30(a).

<sup>114</sup> W. Va. Code §3-2-30(b).

<sup>115</sup> W. Va. Code §3-2-30(c).

<sup>116</sup> W. Va. Code §3-2-30(d).

<sup>117</sup> W. Va. Code §59-1-2b.

Revenue from the purchasing of lists is deposited into the State Election Fund.<sup>118</sup>

Purchased lists must not be used for commercial or charitable solicitations, advertising, or sold or reproduced for sale.<sup>119</sup>

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<sup>118</sup> W. Va. Code §3-2-30(e).

<sup>119</sup> W. Va. Code §3-2-30(f).

# 3 CHAPTER THREE: Poll Workers

## Poll Workers

### *Eligibility*

To be eligible to be appointed or serve as a poll worker (also known as an “election official”) in any state, county, or municipal election in West Virginia, a person must meet the following requirements:

- Be a registered voter of the county for elections held in the county, and a registered voter of the municipality for elections in the municipality;
  - If the required number of election officials is unavailable or unwilling to serve, a registered voter of the county from outside the municipality may serve.
- Be able to read and write the English language;
- Not be a candidate on the ballot or an official write-in candidate (except for executive committee candidates);
- Not be the parent, child, sibling, or spouse of a candidate on the ballot or an official write-in candidate in the precinct where the official serves;
- Not be otherwise prohibited by statute from serving as an election official; and
- Not have been previously convicted of a violation of any election law.<sup>120</sup>

Additionally, the county commission may suspend a person’s eligibility to serve as an election official for four (4) years by majority vote for any of the following reasons:

- Failure to appear at the polling place at the designated time without notice or cause;
- Failure to perform the duties of an election official as required by law;
- Improper interference with or violation of the secrecy of a voter casting a ballot;
- Being under the influence of alcohol or drugs while serving as an election official; or
- Having anything wagered or bet on the outcome of an election.<sup>121</sup>

If the county commission receives a petition signed by at least twenty-five (25) registered voters of the precinct where the individual last served, submitted at least ninety (90) days prior to an election, the commission may suspend the individual’s eligibility to serve as an election official for two (2) years by majority vote. The petition must include evidence supporting at least one of the disqualifying reasons listed above.

### *Election Official Nomination*

Election officials are nominated by the county executive committee for each of the two (2) major political parties in the county by majority vote at a duly called meeting. At least eighty-four days before each primary and general election, the county commission must release to both major

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<sup>120</sup> W. Va. Code §3-1-28(a).

<sup>121</sup> W. Va. Code §3-1-28(b).

political party county executive committees a list specifying the designated number and types of election boards required.<sup>122</sup>

Each committee will nominate one (1) person for each team of poll clerks and one (1) person for each team of election commissioners. The appointing body will then select one (1) additional qualified person to serve as the additional election commissioner.<sup>123</sup> The appointing body may be:

- The county commission (for elections ordered by the commission or for joint municipal and county elections);
- The municipal governing body (for elections ordered by that body not concurrent with county elections); or
- The Board of Education (for special elections ordered by the board that differ from other elections).<sup>124</sup>

County executive committees must also nominate qualified alternates totaling at *least* ten percent (10%) of the poll clerks and election commissioners to be appointed. They may further authorize as many persons as there are precincts in the county to serve in the event the appointed officials fail to accept their appointments or fail to appear for required training or to execute their duties.<sup>125</sup>

The executive committees must file a written list of all nominated persons – specifying the positions for which they are nominated, including alternates - with the appropriate appointing body no later than the seventieth (70<sup>th</sup>) day before the election.<sup>126</sup>

In municipal elections, municipal executive committees perform the same nominating duties as the county executive committees for the two (2) major political parties. If the municipality does not have an executive committee, the municipal governing body must establish, by ordinance, a process for nominating eligible persons. This process must give due consideration to recommendations made by voters and candidates on the ballot.<sup>127</sup>

All nominate candidates may be confirmed before appointment by the county clerk or the municipal recorder, as appropriate.

If a sufficient number of qualified, willing persons cannot be nominated, members of one precinct's standard receiving board may be assigned to simultaneously serve on another precinct's standard receiving board – provided that no more than three precincts within the same

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<sup>122</sup> W. Va. Code §3-1-29(b).

<sup>123</sup> W. Va. Code §3-1-30(a).

<sup>124</sup> W. Va. Code §3-1-30(c).

<sup>125</sup> W. Va. Code §3-1-30(a)(3).

<sup>126</sup> W. Va. Code §3-1-30(a)(4).

<sup>127</sup> W. Va. Code §3-1-30(b).

building share these board members.<sup>128</sup>

### ***Appointment and Attendance***

The appointing body must appoint election officials for each board no later than the forty-ninth (49<sup>th</sup>) day before the election. If the nominees submitted by the executive committees were filed on time and the individuals are eligible, they will be appointed. If no nomination – or too few – are submitted, the appointing body will fill the remaining positions.<sup>129</sup>

At the same meeting, or a later meeting, the appointing body must also appoint alternate officials. Alternates will not be compensated for election training *unless* they are:

- Specifically instructed to attend training;
- Actually attend the training; and
- Remain available to serve on Election Day, if needed.<sup>130</sup>

Alternates nominated by the executive committees will be appointed. After all nominated alternates have been assigned, the appointing body may appoint additional alternates as necessary. The appointing body also determines how many persons may be instructed to attend training as alternates.<sup>131</sup> If any vacancies remain after these steps, the county clerk is responsible for appointing other qualified individuals to fill them.

Within seven (7) days of appointment, the county clerk will notify all appointed election commissioners, poll clerks, and alternates by first-class mail. The notice must include a response form for the appointee to return, indicating whether or not they agree to serve. If the appointee fails to return the form or otherwise confirm with the county clerk within fourteen (14) days, the position will be filled.<sup>132</sup>

If an appointed official fails to appear at the polling place by 5:45 a.m. on Election Day (or, for one-half [1/2] day workers, fails to appear by a time designated by the clerk) the officials present will contact the county clerk's office (or the municipal recorder or clerk, as applicable) to report the absence. The clerk may then:

- Attempt to contact the person originally appointed;
- Assign an alternate from the same political party as the absent official; or
- Appoint another eligible person, if no alternate is available.

If the election officials are unable reach the clerk in a reasonable amount of time, they will diligently attempt to fill the vacancy with an eligible person from the same political party as the

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<sup>128</sup> W. Va. Code §3-1-30(j).

<sup>129</sup> W. Va. Code §3-1-30(e).

<sup>130</sup> W. Va. Code §3-1-30(f).

<sup>131</sup> W. Va. Code §3-1-30(f).

<sup>132</sup> W. Va. Code §3-1-30(h), (i).

absent official.<sup>133</sup>

If the two teams of election officials are properly present, the person filling a vacancy in the additional commissioner's position may be of any party.

### ***Standard Receiving Board***

Election officials in a particular precinct are referred to as the "standard receiving board," which conducts the voting process at the polls. A standard receiving board must consist of "no less than five (5) persons, to be comprised as follows:"<sup>134</sup>

Note: Municipal receiving boards must consist of at least four (4) persons:

- At least one team of poll clerks;
- At least one team of election commissioners for the ballot box; and
- One additional commissioner (*not required in municipalities*).

All members of the receiving board members must take and sign the oath required by W. Va. Code §3-1-30a.<sup>135</sup>

Additional teams may be assigned to a precinct at the discretion of the county clerk or the county commission. The county commission determines and designates the number and types of election boards for each precinct and must notify the county executive committees of the two (2) major political parties in writing at least eighty-four (84) days before each primary and general election regarding the number of nominations permitted for poll clerks and election commissioners.<sup>136</sup>

Each team of poll clerks and election commissioners must be comprised of two (2) individuals of different political affiliations (i.e., not both registered with the same political party, and not both unaffiliated).

Precincts may also accept "election official trainees," - individuals who are sixteen (16) or seventeen (17) years old and who meet the eligibility requirements to serve as a poll worker.

For municipal elections held independently of county elections, the municipal governing body assumes the duties of the county commission, including designating the number and type of election boards and suspending eligibility. In such cases, the receiving board must include at least four (4) members, consisting of one team of poll clerks and one team of election commissioners.<sup>137</sup>

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<sup>133</sup> W. Va. Code §3-1-30(k)(2).

<sup>134</sup> W. Va. Code §3-1-29(a).

<sup>135</sup> W. Va. Code §3-1-30a.

<sup>136</sup> W. Va. Code §3-1-29(b).

<sup>137</sup> W. Va. Code §3-1-29(c).

## **Compensation**

The compensation for ballot commissioners, election commissioners, poll clerks, and alternate commissioners is fixed by the county commission.<sup>138</sup> All persons classified as election officials under by W. Va. Code § 3-1-44 must be paid the same amount within the county.<sup>139</sup>

Ballot commissioners are paid a set amount for each day of service. However, they may not be compensated for more than ten (10) days of service for any on election.<sup>140</sup>

Election commissioners and poll clerks are paid for one day of service for attending the election officials' school of instruction, provided they also serve for at least one half (1/2) day during the election.<sup>141</sup>

Alternative election commissioners and poll clerks may be paid for one day of training, but only if:

- The alternate is subsequently appointed to serve; or,
- The alternate is instructed to attend, attends the training, and is available to serve on Election Day.<sup>142</sup>

Election commissioners or poll clerks who obtain and deliver election supplies are entitled to be paid an additional sum and mileage reimbursement at the approved rate.<sup>143</sup>

Recommendation for poll worker compensation: The typical compensation \$175 for service on Election Day and \$125 for attending training. For current and official pay rate, consult the county clerk.<sup>144</sup>

## **Elections with Double Boards**

The county commission has the option of appointing a "counting board" in addition to the standard receiving board for an election. The counting board has the composition and eligibility requirements as the receiving board, but it takes a different oath and performs different duties during the election.<sup>145</sup>

In elections where both a receiving and a counting board have been appointed (*i.e.*, a double board), the receiving board is responsible for attending the opening of the polls and receiving votes as they are cast. The counting board is not required to report to the polls until three (3) hours after the polls open, at which time they take custody the ballot box containing the

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<sup>138</sup> W. Va. Code §3-1-44.

<sup>139</sup> W. Va. Code §3-1-44(f).

<sup>140</sup> W. Va. Code §3-1-44(a).

<sup>141</sup> W. Va. Code §3-1-44(b).

<sup>142</sup> W. Va. Code §3-1-44(c).

<sup>143</sup> W. Va. Code §3-1-44(d).

<sup>144</sup> W. Va. Code §3-1-44.

<sup>145</sup> W. Va. Code §3-1-30a.

morning's votes and begin counting and tabulating the cast ballots in a partitioned room.

Once the counting board finishes counting the ballots in the first box, they will seal the ballots in an envelope, which shall not be opened until the two boards reconvene at the close of the polls. The counting board then exchanges the empty ballot box for the other and continues the counting process, repeating this cycle until the polls close.<sup>146</sup>

### ***Voter Challenge by Precinct Election Official***

The receiving board will challenge the right of any person requesting a ballot if:

- The person's registration record is not available at the time of the election;
- The signature in the poll book does not match the signature on the registration record;
- The registration record indicates any other legal disqualification;
- The person fails to present a valid identifying document; or
- Any other valid challenge exists against the voter related to an absentee ballot.

If a person is challenged, he or she must still be allowed to vote and will be given an official ballot. However, instead of endorsing the ballot as normal, the poll clerks must complete and sign a form stating the reason for the challenge and listing the names of the challengers. This form will be attached to the voter's ballot and deposited into an envelope marked "Challenged" or "Provisional" ballots.<sup>147</sup>

Before issuing a provisional ballot, the poll clerk must provide the voter with written instructions concerning the free access system for checking whether their vote was counted, along with a statement that the vote may not be counted if cast in the wrong precinct. If it is discovered that the voter is in the wrong precinct, the poll clerk will attempt to direct the voter to the correct one.

Provisional ballots are not counted by election officials on Election Day. Instead, they are reviewed and counted by the county commission during canvassing, which will determine whether the challenge is unfounded. Any provisional ballots deemed valid will be counted and included in the official election results.<sup>148</sup>

A voter who casts a provisional ballot or whose vote is otherwise challenged may track their ballot by visiting the free access system on the West Virginia Secretary of State's website or by contacting the county commission where the vote was cast.<sup>149</sup>

### ***Poll Workers Voting on Election Day***

A person who is a duly appointed election commissioner or poll clerk serving in a precinct other

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<sup>146</sup> W. Va. Code §3-1-33.

<sup>147</sup> W. Va. Code §3-1-41(a), (b).

<sup>148</sup> W. Va. Code §3-1-41(e).

<sup>149</sup> W. Va. Code §3-1-41(g).



than the one in which he or she is registered to vote may cast a provisional ballot in the precinct where they are serving. Only the votes for the offices and issues for which the voter is legally authorized to vote will be counted. The county commission will record the provisional ballot on the voter's permanent registration record.<sup>150</sup>

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<sup>150</sup> W. Va. Code §3-1-41(f).

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## CHAPTER FOUR: Candidates and Finances

### Primaries and Nomination

#### *Age and Residency Requirements*

The West Virginia Constitution provides that “No person, except citizens entitled to vote, shall be elected or appointed to any state, county, or municipal office.”<sup>151</sup> Therefore, potential candidates must meet the following voter registration requirements:

- Be at least eighteen (18) years of age;
- Reside in the state, district, or municipality in which they are seeking office;
- Not have been declared mentally incompetent by a court of competent jurisdiction;
- Not be under conviction of treason, felony, or bribery in an election.<sup>152</sup>

Additionally, certain offices have heightened requirements. Candidates for Governor and Judges must be at least thirty (30) years old and candidates for Attorney General and State Senators must be at least twenty-five (25) years old. These candidates must have been citizens of West Virginia for at least five (5) years immediately preceding their election or appointment.<sup>153</sup>

#### *Certificate of Announcement*

Any eligible person seeking to hold an office or party position filled by election must file a certificate of announcement to declare his or her candidacy. Such certificate must be filed:

- With the Secretary of State, if the candidate is seeking election to:
  - House of Delegates;
  - State Senate;
  - Circuit Judge;
  - Family Court Judge; or
  - Any office or political position to be filled by voters of more than one (1) county.
- With the County Clerk, if the candidate is seeking election to:
  - An office or political position to be filled by voters of a single county or subdivision (excluding the offices listed above).
- With the Municipal Recorder or City Clerk, if the candidate is seeking election to an office filled by voters of that municipality.<sup>154</sup>

**Filing Deadline.** The certificate of announcement must be filed between the second (2<sup>nd</sup>) Monday in January and the last Saturday in January preceding the primary election. Certificates are only valid if they are received by midnight (12:00 a.m.) on the final day of filing or postmarked by the

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<sup>151</sup> W. Va. Const. Art. 4 §4.

<sup>152</sup> W. Va. Const. Art. 4 §1; see “Voter Registration” on page 4.

<sup>153</sup> W. Va. Const. Art. 4 §4.

<sup>154</sup> W. Va. Code §3-5-7(b).

USPS before the deadline.<sup>155</sup>

Candidates of “minor” parties or unaffiliated candidates must file a certificate of nomination, along with a certificate of announcement and filing fee, by August 1<sup>st</sup>, or ninety (90) days before the relevant election, whichever is earlier.<sup>156</sup>

**Certificate of Announcement Contents.** The certificate of announcement is a form created by the Secretary of State. Candidates must sign a sworn, notarized statement that includes:

- The date and name of the election in which the candidate seeks to appear;
- The name of the office sought, including district and division (if any);
- The candidate’s legal name and the exact name to appear on the ballot;<sup>157</sup>
- County of residence and a statement confirming that the candidate is a legally qualified voter of that county;
  - Candidates for magisterial district offices must include their magisterial district of residence;
- The specific residence address at the time of filing, including number, street, box number, city, state, and zip code.

For partisan elections, the certificate must also include:

- The political party affiliation of the candidate; and
- A statement that the candidate:
  - Is a member of and affiliated with that party according to their current voter registration; and
  - Has not been registered with any other political party within the sixty (60) days prior to the filing.<sup>158</sup>

For delegate-to-national-convention candidates, the certificate includes:

- The name of the presidential candidate to be listed on the ballot as the delegate’s preference on the first convention ballot (or “uncommitted”);
- A statement that the individual is a candidate in good faith; and
- The words, “Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_” and a space for the signature of the officer giving the oath.<sup>159</sup>

**Additional Guidelines:** A person may not file for more than one (1) office or office division unless also seeking to be:

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<sup>155</sup> W. Va. Code §3-5-7(c).

<sup>156</sup> See Opinion of the Attorney General Regarding the Applicable Filing Deadline for Minor Party and Unaffiliated Candidates to Appear on the General Election Ballot. W.Va. Att’y Gen. (July 7, 2017).

<sup>157</sup> W. Va. Code §3-5-13(4); W. Va. C.S.R. §153-14.

<sup>158</sup> W. Va. Code §3-5-7(d)(6).

<sup>159</sup> W. Va. Code §3-5-7(d).

- President or Vice President of the United States;
- A member of a political party executive committee; or
- A delegate to a national convention.<sup>160</sup>

If a person files for multiple offices and does not withdraw from all but one (1) before the close of the filing period, that person will not be certified and will not appear on the ballot.<sup>161</sup>

The Secretary of State or board of ballot commissioners may refuse to certify a candidacy - or may revoke certification - upon receiving a certified copy of the candidate's voter registration record showing that the candidate was registered with a different political party during the 60 days prior to filing. To be valid, a signed formal complaint and a copy of the voter's registration record must be filed no later than 10 days after the close of the filing period. If these requirements are not met, the candidate may not be denied certification on that basis.<sup>162</sup> **Any person who knowingly provides false information on the certificate of announcement is guilty of false swearing.**

**Changing Presidential Preference or Delegate Status.** If a delegate to the national convention wants to change their presidential preference after filing, they must notify the Secretary of State by letter received no later than the third (3<sup>rd</sup>) Tuesday following the close of candidate filing.

If political party rules require presidential candidates to approve or reject delegate candidates, a list of approved and rejected candidates may be filed with the Secretary of State by the presidential candidate or their committee. Any rejected delegate will be listed as "uncommitted" on the ballot.<sup>163</sup>

### ***Nomination for Nonaffiliated Candidates***

Candidates having no recognized major party affiliation may secure nomination by filing a certificate of nomination. These candidates must obtain permission from each county in which they are running and collect signatures from registered voters in the state, district, county, or other political division corresponding to the office sought.

The certificate, prescribed by the Secretary of State, must be personally signed by registered voters – in their own handwriting or by marks duly witnessed – who reside within the relevant political division.

The number of required signatures must equal at least one percent (1%) of the total votes cast in the previous general election for any statewide congressional or presidential candidate. However, no fewer than twenty-five (25) valid signatures will be accepted. If two (2) or more nominations can be made for the same office, the one percent (1%) requirement is based on the

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<sup>160</sup> W. Va. Code §3-5-7(h).

<sup>161</sup> W. Va. Code §3-5-7(i).

<sup>162</sup> W. Va. Code §3-5-7(e).

<sup>163</sup> W. Va. Code §3-5-7(g).

vote total for the candidate(s) receiving the highest number of votes in the previous election.<sup>164</sup>

For offices elected by voters in multiple counties, separate signature forms must be used for each county.

Each certificate of nomination must include:

- The name and residence of the candidate;
- A statement that the candidate is legally qualified to hold the office;
- A statement that the subscribers are legally qualified and duly registered voters; and
- A declaration that the subscribers desire the candidate to be nominated.

A brief name of the party the candidate represents, along with an emblem or device, may be included on the certificate for printing on the ballot.<sup>165</sup>

Candidates nominated by certificate will appear on the ballot in the same manner as candidates nominated by other means.

The Secretary of State or county clerk, as applicable, may investigate the validity of certificates and signatures. If the validity is in doubt, the Secretary of State may request the Attorney General – or the county clerk may request the county prosecuting attorney – to initiate a proceeding to determine the nominee’s eligibility.<sup>166</sup>

All nominating certificates must be filed no later than August 1 before the general election. For all other elections, certificates must be filed at least ninety (90) days before the election date, unless otherwise provided by a charter or ordinance.<sup>167</sup>

Candidates must file their certificate of nomination with the same office where they filed their certificate of announcement:

- With the Secretary of State for offices voted on statewide or by voters of more than one county;
- With the county clerk for county, magisterial district, or single-county offices;
- With the municipal recorder or clerk for municipal offices.<sup>168</sup>

### ***Write-In Candidate Filing***

To be placed on the ballot as a write-in candidate, a person must file a specific Write-In Candidate’s Certificate of Announcement. **Write-in candidacy is not permitted for delegates to the national convention or for political party nominations for any office.**<sup>169</sup>

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<sup>164</sup> W. Va. Code §3-5-23(c).

<sup>165</sup> W. Va. Code §3-5-23(d).

<sup>166</sup> W. Va. Code §3-5-23(e).

<sup>167</sup> W. Va. Code §3-5-24(a).

<sup>168</sup> W. Va. Code §3-5-24(b).

<sup>169</sup> W. Va. Code §3-6-4a.

The certificate of announcement for a write-in candidate is a separate form prescribed by the Secretary of State. The candidate must sign a sworn oath before a notary public or other authorized officer, and the certificate must include the following information:

- The name of the office sought, including the district and division, if applicable;
- The legal name of the candidate, and the first and last name by which the candidate may be identified;
- The specific residential address of the candidate at the time of filing, including street number or rural route, box number, city, state, and zip code;
- A statement that the candidate is filing in good faith; and
- The words “Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,” followed by a space for the signature of the officer administering the oath.

The write-in certificate of announcement will be filed with the same office as a normal certificate of announcement, depending on the office sought.<sup>170</sup>

In general, write-In certificates of announcement must be received no later than the forty-ninth (49<sup>th</sup>) day before the election in which the candidate intends to participate. However, if a vacancy in nomination occurs due to death, disqualification, or removal of a candidate between the forty-eighth (48<sup>th</sup>) and the fifth (5<sup>th</sup>) day before the general election, the deadline to file a write-in certificate of announcement becomes the fifth (5<sup>th</sup>) day before the election or the day following the vacancy – whichever is later.<sup>171</sup>

Any eligible person who timely files a completed write-in certificate of announcement with the appropriate office will be certified as a write-in candidate.

Immediately following the filing deadline, the Secretary of State will publish the names of all certified write-in candidates seeking office in multiple counties and will certify these names to the respective county clerks.

Each county clerk will then post the names of all certified write-in candidates for offices in their county and certify and deliver the names of official write-in candidates to election officials in the appropriate precincts. The names of all official write-in candidates will be posted at the office where absentee and early voting is conducted and at the precincts.<sup>172</sup>

### ***Filing Fees***

When a candidate files a Certificate of Announcement (or Certificate of Nomination, if applicable), he or she must also pay a filing fee. The fee amount varies depending on the office the candidate seeks:

- Candidates for the following offices will pay a fee equal to one percent (1%) of the total

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<sup>170</sup> W. Va. Code §3-5-7 and see “Certificate of Announcement” on page 36.

<sup>171</sup> W. Va. Code §3-6-4a(c).

<sup>172</sup> W. Va. Code §3-6-4a(d).

annual salary of the office:

- President of the United States (capped at \$2,500);
  - U.S. Senate;
  - U.S. House of Representatives;
  - Governor;
  - State elective offices;
  - Circuit Court Judge;
  - Family Court Judge;
  - State Senator;
  - Sheriff;
  - Prosecuting Attorney;
  - Circuit Clerk;
  - County Clerk;
  - Assessor;
  - Member of the County Commission; and
  - Magistrate.
- Candidates for the House of Delegates will pay a filing fee equal to one-half percent (0.5%) of the total annual salary for the office;
  - Candidates for a County Board of Education will pay a \$25 filing fee;
  - Candidates for any other county office will pay a \$10 filing fee;
  - Delegates to the national convention for any political party will pay:
    - \$20 for Delegate-at-Large; and
    - \$10 for District Delegate.
  - Candidates for political executive committees and other political committees will pay:
    - \$20 for a political party's State Executive Committee;
    - \$10 for a political party's County Executive Committee; and
    - \$5 for a political party's Congressional, Senatorial, or Delegate District Committee.<sup>173</sup>

These filing fees must be paid to the appropriate election official with who the certificate is filed and must be submitted at the time the certificate is filed.<sup>174</sup>

### ***In-Lieu-of-Filing-Fee Petitions***

If a candidate seeking nomination is unable to pay the filing fee, he or she may qualify without payment through a petition process.

No earlier than the second (2<sup>nd</sup>) Monday in January before the primary election, the candidate must file an oath stating his or her inability to pay the filing fee. This oath must be filed in the

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<sup>173</sup> W. Va. Code §3-5-8(a)

<sup>174</sup> W. Va. Code §3-5-8; W.Va. Code §3-6-44a; *See Phillips v. Hechler*, 120 F.Supp.2d 587 (2000) (holding that filing fees for write-in candidates are unconstitutional).

same office where the candidate would file a Certificate of Announcement.

Upon receiving the oath, the filing officer will give the candidate an “in-lieu-of-filing-fee” petition form, along with instructions for gathering signatures. The candidate must collect signatures from four (4) qualified voters for every one dollar (\$1) of the required filing fee. While the candidate may submit more signatures than required, any signatures in excess of the required amount will not be counted.

Only registered voters of the county, district, or other political division represented by the office may be solicited for signatures. Candidates gathering signatures must also reside in the county, district, or political division represented by the office, although they are not required to be registered voters themselves.

If a candidate is collecting signatures from voters in multiple counties, separate petition forms must be used for each county.

Signatures obtained for “in-lieu-of-filing-fee” petitions do not count toward the number of signatures required for nomination certificates.<sup>175</sup>

Candidates must file their petitions with the required number of signatures no later than the final day for payment of filing fees and declaration of candidacy.

### ***Certification of Candidates***

The Secretary of State must arrange and certify the names of all candidates who have properly filed their announcements and are entitled to have their names placed on the ballot no later than the eighty-fourth (84<sup>th</sup>) day before the primary election. Each certificate of candidates must include:

- The name and residence of each candidate;
- The office for which each is a candidate;
- The name of the candidate’s political party;
- The ballot on which the candidate’s name will appear; and
- For candidates seeking election as delegates to the national convention, the name of the presidential candidate they support, or the designation “uncommitted.”

Duplicates of these certificates will be posted in a conspicuous place in the Secretary of State’s office until after the primary election.

After completing the certification, the Secretary of State must identify the names to appear on the ballot in each county and certify this information to the respective county clerks. The certification should be transmitted by registered or certified mail. In emergency cases, it may be sent by another reliable and expeditious method.

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<sup>175</sup> W. Va. Code §3-5-8a.



All certificates must be received by the clerk no later than the seventieth (70<sup>th</sup>) day prior to the election.<sup>176</sup>

### ***Election of Delegates to the National Convention***

According to the W. Va. Code, delegates to the national convention of a political party will be elected at each primary election before a presidential election according to a plan adopted by the state party.<sup>177</sup> While this plan is subject to certain provisions in the Code, it may be - and has largely been - overwritten by the administrative rules each political party. Please contact your respective political party for more information.

According to the Code, each state political party will create a method, consistent with the rules of their national party, for the election of delegates in each congressional district of the state and for the selection of alternate delegates to fill any vacancies remaining after the election.

The party's method must be certified by the state party chairperson and filed with the Secretary of State no later than one hundred twenty (120) days before the primary election.<sup>178</sup>

To the extent permitted by the national party guidelines, the party plan must provide the following:

- The voters of the political party will elect the number of delegates to the national convention to which their district is entitled;
- If the state party rules do not require apportionment of delegates based on their commitment for president:
  - The candidates receiving highest number of votes, up to the number of allotted delegates, will be elected as delegates;
  - The candidates receiving the next highest number of votes, up to the number of alternate positions, will be elected as alternates;
- If the national party rules require delegates and alternates to be apportioned based on the percentage of votes cast for presidential candidates (regardless of which delegate candidates receive the highest vote totals), the plan must specify:
  - The number of delegates and alternates to be elected under such apportionment;
  - The method by which the apportionment will be calculated;
  - The method by which the Secretary of State will determine which delegates and alternates are elected;
- If fewer delegates and alternates are elected in the primary than the district is entitled to, the governing body of the state party will appoint individuals from the district to serve as delegates or alternates;
- The number of delegates and alternates apportioned to each congressional district must

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<sup>176</sup> W. Va. Code §3-5-9.

<sup>177</sup> W. Va. Code §3-5-2(a).

<sup>178</sup> W. Va. Code §3-5-2(b).

be based on that district's population, as determined by the most recent national census.<sup>179</sup>

- The official primary ballot must include the statement: "For election in accordance with the plan adopted by the state party and filed with the Secretary of State" following the names of all delegate candidates.<sup>180</sup>

**The statutory provisions have largely been overwritten by the administrative rules of the national parties.** Please current and specific information regarding the selection of delegates to the national convention, please consult your respective party.<sup>181</sup>

### ***Election of County Boards of Education***

Elections for county boards of education will be held on the same date as primary elections, using nonpartisan ballots specifically for this purpose.

No more than two (2) members may be elected from, or serve simultaneously in, the same magisterial district. Eligibility to be elected for a full four (4)-year term or to fill an unexpired two (2)-year term is determined at the time of certification, based on the following criteria:

- The magisterial district of residence of incumbent members whose terms will continue beyond July 1 following the election:
  - No person may be elected who resides in magisterial a district that already has two (2) incumbent members;
  - No more than one (1) candidate may be elected from a magisterial district that already has one (1) incumbent member;
  - A person may be elected to an unexpired term – even if their district already has two (2) members – if at least one (1) of those members is leaving office on July 1 following the election.
- The person elected to an unexpired term will assume the duties of a member of the county board of education.<sup>182</sup>

During the canvass, the board of canvassers will declare and certify the election of the required number of candidates who received the highest number votes to fill the full terms. The next highest vote-getters will be certified to fill any unexpired terms, after the fill terms are filled.<sup>183</sup>

Candidates elected to the county board of education are duly elected and will take office, even if they did not receive a majority or plurality of all votes cast.<sup>184</sup>

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<sup>179</sup> W. Va. Code §3-5-2(c).

<sup>180</sup> W. Va. Code §3-5-2(d).

<sup>181</sup> West Virginian Republican Party: <https://wvgop.org/>; West Virginian Democratic Party: <https://www.wvdemocrats.com/>; see W. Va. Code §3-5-2(e) for the election of delegates-at-large.

<sup>182</sup> W. Va. Code §3-5-6(b).

<sup>183</sup> W. Va. Code §3-5-6(c).

<sup>184</sup> W. Va. Code §3-5-6(d).

### ***Election of Judicial Offices at Primary***

The offices of Justice of the Supreme Court of Appeals, Intermediate Court of Appeals judges, circuit judges, family court judges, and magistrates will be elected during primary elections on nonpartisan ballots printed specifically for that purpose, according to the following stipulations:

- If multiple judges are being elected, the election will be divided into numbered divisions corresponding to the number of judges being elected;
- Votes for each judge in each division will be tallied and certified separately by the board of canvassers;
- If no candidate in a division for judge of a circuit court receives more than thirty percent (30%) of the vote, a runoff election will be held at the time of the general election between the two candidates who received the highest and next-highest number of votes<sup>185</sup>; and
- Each Justice of the Supreme Court of Appeals will be elected at-large from the entire state.<sup>186</sup>

### ***Vacancy in Nomination***<sup>187</sup>

If there are vacancies in the political party nominations or appointments for office, they may be filled subject to the following restrictions:

- Appointments due to vacancies are to be made by the executive committee of the political party in which the vacancy occurs;<sup>188</sup>
  - If the committee holds a duly called meeting but fails to make an appointment or certify the appointment within the time required, the chairperson of the executive committee may make the appointment no later than two (2) days after the committee's deadline.
- Each appointment made is complete only if the proper filing officer - who would normally receive the certificate of announcement<sup>189</sup> - receives the certificate of appointment from the committee or its chairperson, along with the applicable filing fee.
- If the vacancy is caused by failure of a candidate to file, or by withdrawal not later than the third (3<sup>rd</sup>) Tuesday following the close of candidate filing, nominees may be appointed by the executive committee and certified no later than thirty (30) days after the last day to file a certificate of announcement.<sup>190</sup>
- If the vacancy is caused by the disqualification of a candidate and occurs not later than eighty-four (84) days before the general election, a nominee may be appointed by the executive committee and certified no later than seventy-eight (78) days before the general

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<sup>185</sup> W. Va. Code § 3-1-17(d).

<sup>186</sup> W. Va. Code §3-5-6a; W. Va. Code §3-5-6b; W. Va. Code §3-5-6c; W. Va. Code §3-5-6d; W. Va. Code §3-5-6e.

<sup>187</sup> W. Va. Code §3-5-19.

<sup>188</sup> W. Va. Code §3-5-19(a)(1).

<sup>189</sup> See "Certificate of Announcement" on page 36.

<sup>190</sup> W. Va. Code §3-5-19(a)(3).

election:

- Candidates may be disqualified if a written request is made:
  - By an individual;
  - With information to showing the candidate's ineligibility to be placed on the ballot or to hold office;
  - To the State Election Commission;
  - No later than eighty-four (84) days before the general election.
- The State Election Commission will review the request and, if it finds disqualification is warranted, will authorize the executive committee to appoint a replacement.
- If the vacancy is caused by the incapacity of a candidate occurring not later than eighty-four (84) days before the election, the executive committee may appoint a nominee no later than seventy-eight (78) days before the general election.
- If the vacancy is caused by a statement of withdrawal, the executive committee may appoint a replacement no later than seventy-eight (78) days before the general election.
- If the vacancy is caused by the death of the candidate no later than twenty-five (25) days before the general election, the executive committee may appoint a nominee no later than twenty-one (21) days following the date of death *or* twenty-two (22) days before the election, whichever is earlier.
- If a vacancy occurs in a partisan office or position (other than the party executive committee), it will be filled by the executive committee and certified no later than seventy-eight (78) days before the general election, if the vacancy:
  - Creates an unexpired term for a position that would not otherwise appear on the ballot in the general election; *and*
  - Occurs after the close of candidate filing for the primary election and before the eighty-fourth (84th) day before to the general election.<sup>191</sup>

If a vacancy occurs in the Board of Education after the close of candidate filing, but before eighty-fourth (84th) day before the general election, a special candidate filing period will be established. Any candidate seeking election to the unexpired term must file a certificate of announcement and pay the applicable filing fee to the county clerk no earlier than the first (1<sup>st</sup>) Monday in August and no later than seventy-seven (77) days before the general election.<sup>192</sup>

## Contest of Election by Candidates

Candidates who are up for nomination or election to be filled by voters of the state or are candidates for membership of a political party executive committee, may contest the primary election before the county court by the same procedure used for contesting general elections for county or magistrate offices.<sup>193</sup>

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<sup>191</sup> W. Va. Code 3-5-19(b).

<sup>192</sup> W. Va. Code §3-5-19(c).

<sup>193</sup> W. Va. Code §3-5-20, W. Va. Code §3-7-1; see "Contest" on page 98.

The actions of the following boards, committees, and persons may also be challenged by a candidate, political committeeman, or delegate voted for at the same primary:

- Political party executive committees, in the discharge of any duties imposed upon such committees by statute;
- Any board of election officials, in conducting the primary election; or
- Any board of canvassers, in canvassing and certifying the result of a primary election.

These challenges must be filed with the circuit court.<sup>194</sup> Decisions of the circuit court may be reviewed by the Supreme Court of Appeals.

If a contest or the petition of review is not completed at least ten (10) days before the next election – or ten (10) days before the convention, if the contesting candidate is seeking a delegate position to that convention - the case will be dismissed. The person “shown by the face of the returns of the primary election” will then have his or her name printed on the ballot (or, in the case of a delegate, will be entitled to sit at the convention).<sup>195</sup>

## **Deaths of Candidates and Vacancies**

If a candidate who has filed a certificate of announcement dies before the ballots are printed, the candidate’s family may request that his or her name be removed from the ballot.

If a candidate dies after the ballots have been printed but before the election, the county clerk shall post a written notice with each sample ballot at each precinct and early voting location. The notice must include the name, residence, and office the candidate had filed for, along with a statement indicating that the candidate is now deceased.<sup>196</sup>

If there is a vacancy on the ballot due to the failure of any person from a party to file for available seats for an office on the ballot, the executive committee of that party may fill the vacancy and certify the appointed candidate to the appropriate filing officer.

Certification of the appointment, the candidate’s certificate of announcement, and the filing fee must be received by one of the following deadlines:

- For appointments by an executive committee, the required documents and filing fee must be received no later than the second (2<sup>nd</sup>) Friday following the close of the candidate filing period;
- If the executive committee fails to act, the committee chair may make the appointment. In that case, the required documents and filing fee must be received no later than the third (3<sup>rd</sup>) Tuesday following the close of filing.<sup>197</sup>

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<sup>194</sup> W. Va. Code §3-7-6.

<sup>195</sup> W. Va. Code §3-5-20.

<sup>196</sup> W. Va. Code §3-5-11(c).

<sup>197</sup> W. Va. Code §3-5-11(d).

If all appointments are properly and timely filed, the appointed candidates will have their names added to the primary ballot for their party.

## **Withdrawal**

If a candidate wishes to withdraw from the election after filing a certificate of announcement, he or she must file a signed and notarized statement of withdrawal with the same office where the certificate of announcement was originally filed. The statement must be received by:

- For primary, special primary, or nonpartisan elections held in conjunction with a primary: before the close of business on or before the third (3<sup>rd</sup>) Tuesday following the close of the candidate filing period;
- For general, special general, or nonpartisan elections held in conjunction with a general election: before the close of business at least eighty-four (84) days before the election.<sup>198</sup>

If the appropriate office receives a properly completed and notarized statement of withdrawal before the applicable deadline, the candidate's name will not be certified and will not appear on the ballot.<sup>199</sup>

## **Vacancy of the Governor's Office**

If the Governor dies, is impeached, fails to qualify, resigns, or is otherwise unable to continue serving, the President of the Senate shall act as Governor until the vacancy is filled or the Governor's disability is removed. If the President of the Senate is also unable to perform the duties of Governor, the Speaker of the House of Delegates shall act as Governor. If neither of these officials can assume the role, the Legislature shall select another person by a joint vote.<sup>200</sup>

If the vacancy in the Office of Governor occurs within the first three (3) years of the term, a new election shall be held to fill the vacancy. This election will include a special primary and a special general election, scheduled in time to permit the newly elected Governor to assume office within one (1) year of the date the vacancy occurred.

The acting Governor must issue a proclamation within thirty (30) days of the vacancy, setting the dates for the special elections. The special primary must be held no sooner than ninety (90) days and no later than one hundred forty (140) days from the date of the vacancy. The special general election must be held no sooner than ninety (90) days after the primary and not later than two hundred eighty (280) days from the date of the vacancy.<sup>201</sup>

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<sup>198</sup> W. Va. Code §3-5-11(b).

<sup>199</sup> W. Va. Code §3-5-11.

<sup>200</sup> W. Va. Code §3-10-2(a).

<sup>201</sup> W. Va. Code §3-10-2(b).

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## CHAPTER FIVE: Absentee and Early Voting

### The Absentee Voter

An absentee voter is a registered who is eligible to vote but cannot appear at the polls on Election Day. In West Virginia, absentee voters have several options: they may vote during the designated early in-person voting period or, under certain circumstances, may vote by absentee ballot - either by mail or electronically.

There are four (4) categories of absentee voting by mail in West Virginia:

- General absentee voting;
- Special absentee voting;
- Voting under UOCAVA; and
- Emergency absentee voting

A voter may vote by electronic absentee ballot if:

- The voter has a physical disability; or
- The voter is absent from the county throughout the early voting period and is an absent uniformed services voter or overseas voter as defined by UOCAVA.<sup>202</sup>
- The voter is a first responder called away on duty to respond to an emergency outside the voter's county of residence

A disability is defined as a physical or mental impairment that substantially limits one or more major life activities.

A physical disability specifically refers to a physical impairment that substantially limits major life activities and renders the individual unable to vote in person at the polls without assistance.<sup>203</sup>

### Eligibility

All registered and otherwise qualified voters may vote by absentee ballot during the *in-person* early voting period. However, to receive an absentee ballot by mail, the voter must fall into one of the following categories:

- Confined to a specific location due to injury, illness, or another medical reason;
- Physically disabled or immobile due to extreme advanced age;
- Under incarceration or home detention (*unless* detained for felony conviction or election bribery);
- Absent from the county during the entire early voting period *and* Election Day due to employment work hours and distance from county seat that makes voting in person

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<sup>202</sup> W. Va. Code §3-3-1(c).

<sup>203</sup> W. Va. Code §3-3-1a.

impossible; or

- Unable to access the voting area within the courthouse or annex due to a physical disability<sup>204205</sup>

A voter who will receive the ballot at an address outside the county may also vote absentee by mail if they meet one of the following conditions:

- Absent from the county due to personal or business travel;
- Absent due to attendance at a college, university, or other educational or training institution;
- Residing outside of the county during the election period while serving as an elected or appointed federal or state officer; or
- Residing outside of the county during the election period while employed in a position of a specific duration four (4) years or less.<sup>206</sup>

Voters seeking to be placed on the Special Absentee Voting List must be:

- Participating in the Address Confidentiality Program; or
- Permanently physically disabled, preventing the voter from voting in person at the polling place.<sup>207</sup>

Voters eligible under UOCAVA must be:

- Members of the United States Uniformed Armed Services or Merchant Marines on active duty, including National Guard members called to active service;
- The spouses or dependents of such active-duty members; or
- United States citizens temporarily or permanently residing outside the country, who were qualified to vote in the last place they were domiciled before leaving the United States.<sup>208</sup>

Subject to county policy, voters may be eligible to vote an emergency absentee ballot if they are:

- Confined or expect to be confined in a hospital or other healthcare facility within the county of residence (or other authorized area) on Election Day;
- Assigned as a replacement poll worker to a voting district outside their own, *only if* the assignment occurred after the early voting period ended;
- Residing in a nursing home within the county for fewer than thirty (30) days;
- In a hospital or other duly licensed health care facility within an adjacent county or within thirty-five (35) miles of the county seat; or
- Confined, on or after the seventh (7<sup>th</sup>) day before an election, to a specific location within

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<sup>205</sup> W. Va. Code §3-3-1.

<sup>206</sup> W. Va. Code §3-3-5(c)(4).

<sup>207</sup> W. Va. Code §3-3-2b.

<sup>208</sup> W. Va. Code §3-3-1(b)(3).



the county due to illness, injury, physical disability, immobility due to advanced age, or another medical reason.<sup>209</sup>

The application processes and benefits of each type of absentee voting will be discussed in more detail in the next section.

## **Application and Types of Absentee Voting**

### ***General Absentee Ballot***

To apply for a mail-in absentee ballot, a voter must complete, in their own handwriting, a request form supplied by the Secretary of State and submit it to the county clerk of the county in which they reside.

A voter who is unable to complete the application due to illiteracy or physical disability may receive assistance in filling out the application or may complete it electronically. If assistance is provided by another person, the individual must sign their name in the space provided on the form.<sup>210</sup>

The application must include the following voter information:

- Name;
- Date of Birth;
- Political affiliation;
- Residence address within the county;
- Mailing address for the ballot;
- The authorized reason, if any, for which the absentee ballot is requested;
  - If that reason is illness, the name and telephone number of the attending physician must be included;
- The voter's signature attesting, under the penalty of false swearing, that the statements and declarations are true;<sup>211</sup>
- Any additional required information;
- Any required affidavit; and
- An indication of whether the application is for voting in person, by mail, or electronically.<sup>212</sup>

Although this form is available year-round on the Secretary of State's website, county clerks may only accept applications for regular absentee ballots between the eighty-fourth (84<sup>th</sup>) and sixth (6<sup>th</sup>) day before the election. The application may be submitted to the county clerk by mail, in person, or electronically during that window.<sup>213</sup>

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<sup>209</sup> W. Va. Code §3-3-1.

<sup>210</sup> W. Va. Code §3-3-5(a).

<sup>211</sup> See W. Va. Code §3-9-3 outlining penalties for false swearing.

<sup>212</sup> W. Va. Code §3-3-2(b).

<sup>213</sup> W. Va. Code §3-3-5(b).

Voters with a physical disability may submit the completed application by mail or electronically, as prescribed by the Secretary of State.<sup>214</sup>

If a voter is unable to obtain the official form before the deadline, they may submit a written application in a format of their choosing (e.g. a letter), provided it includes *all* required information listed above and is written and signed in the applicant's own handwriting.<sup>215</sup>

### **UOCAVA Voting**

Uniformed service members, other U.S. citizens residing outside of the country, or their spouses and dependents may apply for absentee ballots under UOCAVA.

Application Period and Submission. Voters applying under UOCAVA have an extended period to apply for an absentee ballot. Applications may be submitted no earlier than January 1<sup>st</sup> or eighty-four (84) days before the election (whichever is earlier) and no later than the sixth (6<sup>th</sup>) day preceding the election.<sup>216</sup> These voters may submit and receive ballots electronically.

Eligible voters may apply by completing and signing, in their own handwriting, either:

- The FPCA, or
- The application for military and overseas voters.

Both are available on the West Virginia Secretary of State's website.<sup>217</sup> Applications are sent to the county commission of the voter's home county for processing.

**Federal Write-In Absentee Ballot (FWAB).** At any time during the UOCAVA application period, eligible voters may request a FWAB.

- If the FWAB is received after the forty-ninth (49<sup>th</sup>) day before the election, it will only be valid for local, state, and federal offices in general, primary, and special elections.
- A FWAB may be requested using the FPCA or the UOCAVA form provided by the Secretary of State.
- The request must be made at least thirty (30) days before the election, and the voter must state that they are unable to vote using a regular absentee ballot due to the requirements of military service or residing in an isolated or remote area. requirements of military service or living in an isolated or remote area.
- **The completed FWAB must be received by the close of the polls on Election Day to be counted.**<sup>218</sup>

**Additional Notes.** If a voter mails the application from within the United States, does not request a regular absentee ballot, or if the application for regular ballot is received fewer than thirty (30)

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<sup>214</sup> W. Va. Code §3-3-2(b)(3).

<sup>215</sup> W. Va. Code §3-3-2(b)(4).

<sup>216</sup> W. Va. Code §3-3-2(b)(2).

<sup>217</sup> Applications may be found at <https://sos.wv.gov/elections/Pages/UOCAVA.aspx>.

<sup>218</sup> W. Va. Code §3-3-5b.

days before the election, the application may not be accepted.<sup>219</sup>

UOCAVA application forms also serve as voter registration forms for individuals who were unable to register due to their military service or overseas residency.<sup>220</sup>

### ***Special Absentee Voting List***

Some voters may apply for placement on the Special Absentee Voting List. Voters on this list will automatically be sent an absentee ballot by mail no later than forty-six (46) days before each election, with no further application required.<sup>221</sup>

Applications for the list are available on the West Virginia Secretary of State's website and must include:

- The voter's name and signature;
- The residence address of the voter (unless the applicant is participating in the Address Confidentiality Program); and
- A statement that the applicant is either permanently and totally disabled or a participant in the Address Confidentiality Program (ACP).<sup>222</sup>

**Eligibility for Placement on the Special Absentee Voting List.** There are two (2) ways to qualify for placement on the Special Absentee Voting List:

#### **1. Permanent and Total Disability**

The voter must be permanently and totally physically disabled, making them unable to vote in person at the polls. The application must:

- Be submitted to the county clerk;
- Include a statement signed by a physician affirming the voter's permanent and total disability; and
- Contain a description of the nature of the disability.<sup>223</sup>

#### **2. Participation in the ACP**

Voters participating in the ACP may apply through the ACP Manager in the Secretary of State's Office.<sup>224</sup> These applicants:

- Do not need to provide a residence address or a physician's certificate;
- Must instead include a statement verifying participation in the ACP.<sup>225</sup>

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<sup>219</sup> W. Va. Code §3-3-5b(e).

<sup>220</sup> W. Va. Code §3-2-5(a)(2); see "Deadlines" on page 15.

<sup>221</sup> W. Va. Code §3-3-2b(e).

<sup>222</sup> W. Va. Code §3-3-2b(c).

<sup>223</sup> W. Va. Code §3-3-2b(c)(3)(A).

<sup>224</sup> W. Va. Code §3-3-2b(b); W. Va. Code §48-28A-103.

<sup>225</sup> W. Va. Code §3-3-2b(c)(3)(B).

Removal from the Special Absentee Voting List. A voter may be removed from the list under any of the following circumstances:

- A voter requests removal in writing;
- The voter changes residence to another county, is purged from the voter registration rolls, or otherwise becomes ineligible to vote;
- A ballot mailed to the address provided is returned as undeliverable by the USPS;
- The voter no longer meets the disability requirements;
- The voter dies; or
- In the case of ACP participants, the voter withdraws from or is removed from the program.<sup>226</sup>

### ***Emergency Absentee Voting***

Emergency absentee voting is available for voters who are hospitalized on Election Day or who must work as last-minute replacement poll workers.

The County Commission may adopt a policy before each election to extend emergency absentee voting to the following individuals:

- Voters who have resided in a nursing home within the county for less than thirty (30) days
- Voters in a hospital or other duly licensed health care facility located in an adjacent county or within thirty-five (35) miles of the county seat; or
- Voters who become confined on or after the seventh (7<sup>th</sup>) day preceding the election due to illness, injury, physical disability, immobility caused by advanced age, or another medical reason.<sup>227</sup>

In cases of confinement beginning on or after the seventh (7<sup>th</sup>) day preceding the election, the county clerk may require a written confirmation from a licensed physician, physician assistant, or advanced practice registered nurse (APRN) affirming the voter's eligibility for an emergency absentee ballot.<sup>228</sup>

On or before the fifty-sixth (56<sup>th</sup>) day before Election Day, the official designated to supervise absentee voting must notify the county commission of the number of emergency absentee ballot commissioner teams required to perform their duties.<sup>229</sup> Emergency absentee voting is *not* mandatory but may be adopted at the discretion of the county clerk.

The county commission may also extend this privilege to include:

- Hospitals in adjacent counties or within thirty-five (35) miles of the county seat;

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<sup>226</sup> W. Va. Code §3-3-2b(d).

<sup>227</sup> W. Va. Code §3-3-5c(a).

<sup>228</sup> W. Va. Code §3-3-1(d)(3).

<sup>229</sup> W. Va. Code §3-3-5c(b).

- Nursing homes within the county.

If extended, this policy must be adopted at least ninety (90) days prior to Election Day, applies only to one election, and must be re-filed separately for each primary of general election.<sup>230</sup>

**Application Process.** Emergency absentee ballot applications are prescribed by the Secretary of State.<sup>231</sup> They must be signed by the person requesting the ballot, which may be:

- The voter;
- A member of the voter's immediate family; or
- A nursing home staff member (if the county has chosen to extend such privileges).

Applications must include:

- Voter's name and residence;
- Voter's political party affiliation;
- Date and location of confinement;
- Reason of confinement; and
- Name of the attending physician.<sup>232</sup>

If the person requesting the ballot is unable to sign, assistance may be provided in accordance with state rules for assisting voters.<sup>233</sup>

**Voting Assistance.** A voter is eligible to receive assistance with voting an emergency absentee ballot if they declare that they are:

- Blind;
- Disabled;
- Unable to read or write;
- Of extreme advanced age; or
- Otherwise in need of assistance.<sup>234</sup>

Anyone assisting the voter must complete an affidavit as prescribed by W. Va. Code §3-3-6.

**Ballot Delivery.** Upon receiving the request after the seventh (7<sup>th</sup>) day before the election and no later than noon (12:00 p.m.) on Election Day, a team of emergency election commissioners will:

- Deliver the application and ballot materials to the voter;
- Wait while the application and ballot are completed; and
- Return the materials to the appropriate election officials before the polls close on Election

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<sup>230</sup> W. Va. Code §3-3-5c.

<sup>231</sup> Application may be found at:

<https://sos.wv.gov/FormSearch/Elections/Voter/Application%20for%20Voting%20an%20Emergency%20Absent%20Voter's%20Ballot.pdf>.

<sup>232</sup> W. Va. Code §3-3-5c(d).

<sup>233</sup> W. Va. Code §3-3-5c(e); see "Absentee Ballot Voter Assistance" on page 63.

<sup>234</sup> W. Va. Code §3-3-6.

Day.<sup>235</sup>

### ***Provisional Ballots***

If the county clerk or other election official determines that a voter is not eligible to vote absentee – whether due to an improperly completed application or another reason - the county clerk must send the voter a provisional ballot, which will be challenged according to applicable rules and procedures for doing so.<sup>236</sup>

## **Processing Absentee Ballot Applications**

### ***Processing Absentee Ballots***

Applications for absentee ballots must be submitted between eighty-four (84) and six (6) days prior to the election to be accepted by the county clerk or other election official. Upon receiving a completed application, the official designated to supervise and conduct absentee voting must determine whether the following requirements have been met:

- The application has been completed as required by law;
- The applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested;
- The applicant is authorized, for the reasons given in the application, to vote an absentee ballot by mail;
- The address to which the ballot is to be mailed is outside the county, if the voter is applying to vote by mail;<sup>237</sup>
- The applicant is not casting his or her first vote after registering by postcard registration;
  - If the applicant *is* casting his or her first vote after registering by postcard, the applicant is exempt from these requirements.
- There is no regular and repeated pattern of applications for an absentee ballot by mail due to being outside the county during the entire in-person voting period that would suggest that the applicant is no longer a resident of the county.<sup>238</sup>

It is the duty of the county clerk (or other designated official) to determine whether the application is likely to be valid. If the clerk or the designee believes, for any of the above reasons, that the application is not valid, the voter will be issued a provisional ballot with notice that the absentee ballot will be challenged.<sup>239</sup>

If, however, the application meets all requirements, the clerk or designee will mail the applicant a ballot packet containing:

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<sup>235</sup> W. Va. Code §3-3-5c.

<sup>236</sup> W. Va. Code §3-1-41.

<sup>237</sup> W. Va. Code §3-3-1.

<sup>238</sup> W. Va. Code §3-3-5(c).

<sup>239</sup> W. Va. Code §3-3-5(d).

- One of each requested ballot, signed by two (2) representatives of different political parties;
- One unsealed envelope marked “Absent Voter’s Ballot Envelope No. 1”;
- One postage-paid envelope marked “Absent Voter’s ballot Envelope No. 2”;
- Instructions for the voter;
- A device for marking the ballot with an electronically sensible pen, as appropriate;
- A notice that a list of official write-in candidates is available upon request; and
- Any other supplies required by the voting system used.<sup>240</sup>

Upon receipt of the materials, the voter will complete the ballot and return it according to the instructions. Absentee ballots must be hand-delivered no later than the day before the election,<sup>241</sup> mailed with a postmark dated before Election Day and received before the state of canvass or mailed without a postmark but received by the day after Election Day.<sup>242</sup>

### ***Special Absentee Ballots***

Voters that have successfully applied to the Special Absentee Voting List receive their ballots by mail, just like regular absentee voters by mail. These ballots are identical to those sent to regular absentee voters by mail, except that they are sent automatically on the forty-sixth (46<sup>th</sup>) day before the election. The return deadlines for special absentee ballots are the same as those for regular absentee ballots by mail. Ballots may be returned by mail or by hand delivery, subject to the applicable limitations on hand delivery.<sup>243</sup>

### ***UOCAVA Ballot Application***

Unlike general absentee voting requests, applications under UOCAVA may be submitted between January 1<sup>st</sup> before the election (or the eighty-fourth [84<sup>th</sup>] day before the election, whichever is earlier) and the sixth (6<sup>th</sup>) day before the election. Upon receipt and verification of a valid UOCAVA application, the absentee voting official will send a ballot pack to the applicant either by mail or electronically, depending on the applicant’s selected preference. If no preference is indicated, the official will choose the method of delivery.<sup>244</sup>

A ballot pack sent by mail will include the same materials as listed above. However, a ballot pack sent electronically will include:

- A waiver of privacy form (as prescribed by the Secretary of State);
- Instructions for voting absentee using the electronic system;
- A notice stating that a list of write-in candidates is available upon request; and
- A statement by the voter confirming his or her name, address, and whether any assistance

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<sup>240</sup> W. Va. Code §3-3-5(e)(1).

<sup>241</sup> Note: No person may deliver more than two (2) absentee ballots to the County Clerk’s office.

<sup>242</sup> W. Va. Code §3-3-5(g), (k).

<sup>243</sup> W. Va. Code §3-3-2b.

<sup>244</sup> W. Va. Code §3-3-5.

was received in voting.<sup>245</sup>

Completed UOCAVA ballots must be returned “no later than the hour at which the board of canvassers convenes to begin canvass.”<sup>246</sup> If the ballot is returned electronically, it must be received no later than the close of polls on Election Day.<sup>247</sup>

### ***Federal Postcard Application (FPCA)***

Upon receipt of a FPCA, the county clerk or other designated absentee voting official must take the following steps:

- Enter the name of the applicant into the permanent absentee voter record for each election for which a ballot is requested, make a photocopy of the application for each election, and place the separate copies in secure files to be maintained for use in elections;
- Determine whether the applicant is registered to vote at the residence listed on the application;
  - If not, the official shall forward the FPCA to the county clerk for processing, where it will be treated as a voter registration application;
- Determine if the FPCA was received within the voter registration window for the next election;
  - If not, the official shall challenge the absentee ballot;
- Process the application as if it were a standard absentee ballot request by mail.

After completing these steps, the official shall mail the ballot(s) to the voter on the first day both the application and ballots become available.<sup>248</sup>

### ***Federal Write-In Absentee Ballot (FWAB)***

If the voter is applying under UOCAVA and applied for a FWAB, the FWAB may be used as a replacement or backup for the UOCAVA ballot. The FWAB must be received by close of polls on Election Day.

If a voter mails the application from within the United States and either does not apply for a regular absentee ballot (including by mail) or the application for regular ballot is not received before thirty (30) days before the election, the FWAB may not be counted.<sup>249</sup>

If both a regular ballot and FWAB are received by the county clerk, the clerk shall accept the ballot and spoil the FWAB.

### ***Emergency Absentee Ballot Application***

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<sup>245</sup> W. Va. Code §3-3-5(e)(2).

<sup>246</sup> W. Va. Code §3-3-5(h).

<sup>247</sup> W. Va. Code §3-3-5(i).

<sup>248</sup> W. Va. Code §3-3-5a.

<sup>249</sup> W. Va. Code §3-3-5b(e).



Upon receiving a request for emergency absentee ballots, the county commission will send a team of commissioners at-large to the requesting party with both an application and a ballot. As provided in the W. Va. Code, “A set of emergency absentee ballot commissioners at-large shall consist of two (2) persons with different political party affiliations.”<sup>250</sup> The county clerk must notify the county commission of the number of such teams needed no later than the fifty-sixth (56<sup>th</sup>) day before the election.<sup>251</sup>

At least one of the emergency absentee ballot commissioners who receives the balloting materials shall sign a receipt, which must be attached to the application form.<sup>252</sup>

The team will first deliver the application, ensuring the voter completes and signs it – or receives assistance in doing so. Each team member of the team will then sign and complete a declaration stating their names, the date, and the details regarding the nature of the confinement at the voter’s location.<sup>253</sup>

Once the application is complete, the commissioners at-large will deliver the ballot to the voter to complete. The team will then return the ballot and application to the absentee voting official, along with a signed oath affirming that “no person other than the absent voter voted the ballot.” The team must return the ballot in this way before the close of polls on Election Day. Any ballots delivered after the polls close will be challenged and delivered to the board of canvassers along with other challenged absentee ballots.<sup>254</sup>

Upon receiving the application and emergency absentee ballot, the absentee voting official shall determine whether the application is complete, whether the voter is eligible to vote an emergency absentee ballot, and whether the voter is properly registered in the county. If the official is satisfied, the ballot will be delivered to the precinct election commissioner for counting. If the official is not satisfied, the ballot will be challenged.<sup>255</sup>

If either member of the team of commissioners at-large refuses to sign the application for voting an emergency ballot, the ballot will be challenged.<sup>256</sup>

### ***Erroneous Absentee Ballots***

If a ballot is found to contain “an error which, in the opinion of the board [of ballot commissioners], is of sufficient magnitude to confuse or mislead the voters,” the board may choose either to reprint the erroneous ballots or to cover the mistakes with appropriately sized

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<sup>250</sup> W. Va. Code §3-3-5c(c).

<sup>251</sup> W. Va. Code §3-3-5c(c); W. Va. Code §3-1-29.

<sup>252</sup> W. Va. Code §3-3-5c(g).

<sup>253</sup> W. Va. Code §3-3-5c(f).

<sup>254</sup> W. Va. Code §3-3-5c(g).

<sup>255</sup> W. Va. Code §3-3-5c(h).

<sup>256</sup> W. Va. Code §3-3-5c(i).

stickers.<sup>257</sup>

If such a mistake is discovered after the mailing of absentee ballots begins, the county clerk should:

- Stop processing absentee ballots until the mistake is corrected;
- Mail corrected ballots to each voter who received a ballot containing the error; and
- Include a letter explaining the situation.

If the voter returns only the ballot containing the error, the ballot should be made provisional, and the board of canvassers should count all votes within the correct portions. The board will determine how to address the remaining issues.

If the voter returns both the original and corrected ballots: The erroneous ballot will be spoiled and the corrected ballot will be made provisional. The board of canvassers should count the corrected ballot.

If the voter returns only the corrected ballot: The ballot will be made provisional. Assuming no other challenge exists, the board should count the corrected ballot.

### ***Eligibility of Former Residents to Vote in a Presidential Election***

Some voters may remain eligible to vote even after recently moving out of the state. Any citizen of the United States who:

- Moves from the state within thirty (30) days preceding an election for President and Vice President;
- Satisfied the registration requirements of this state before moving; and
- Has not satisfied registration requirements in the state which they moved

may vote for President and Vice President in that election.<sup>258</sup>

This statute is intended to align the state with the federal Voting Rights Act Amendments of 1970.

## **Processing Absentee Ballots**

### ***Storage and Administration of Votes***

Upon receipt of absentee ballots, the county clerk is responsible for their security until Election Day. If a ballot by mail is accepted according to the criteria discussed in the previous section of this manual, the absentee voting official should:

- Complete any other information required on the envelope;
- Record any challenge to the ballot;
- Enter the required information into the permanent record of persons applying for and

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<sup>257</sup> W. Va. Code §3-1-21(f).

<sup>258</sup> W. Va. Code §3-1-3a(2).

voting by absentee ballot in person; and

- Place the sealed envelope into a ballot box secured by two (2) locks - one key held by the president of the county commission and the other by the county clerk.<sup>259</sup>

If the ballot is accepted electronically from a voter under UOCAVA, the absentee voting official shall place the ballot in an envelope marked “Absentee by Electronic Means”, with the waiver of privacy included. Ballots must not be processed in this manner unless two (2) individuals of different political parties are present. Electronic ballots should be tabulated in the same manner as ballots by mail, to the extent appropriate. The clerk must maintain a record of all absentee ballots sent and received.<sup>260</sup>

All ballots will remain stored in this manner until they are counted on Election Night.<sup>261</sup>

### ***Late Ballots***

Ballots received after the designated deadline cannot be accepted.<sup>262</sup> Instead of being placed in the ballot box, late ballots must remain unopened and place in a specifically marked envelope. These envelopes are to be retained for twenty-two (22) months following the election, after which they must be destroyed without being opened.<sup>263</sup>

### ***Hand-Delivery of Ballots***

One (1) person may hand-deliver no more than two (2) ballots in an election and must certify that they have not examined or altered any ballot.<sup>264</sup>

## **Early Voting**

“The voting period for early in-person voting is to be conducted during regular business hours beginning on the thirteenth (13<sup>th</sup>) day before the election and continuing through the third (3<sup>rd</sup>) day before the election,” including Saturdays from 9:00 a.m. to 5:00 p.m. during this period.<sup>265</sup>

### ***Locations***

The county commission may designate the courthouse or judicial annex as the primary location for early voting and may, by a majority vote of its members, designate additional community voting locations. If the commission intends to designate additional locations, it must publish notice of that intent at least thirty (30) days prior to the designation by way of advertisement within the county.

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<sup>259</sup> W. Va. Code §3-3-5(l).

<sup>260</sup> W. Va. Code §3-3-5(m).

<sup>261</sup> W. Va. Code §3-3-5(n).

<sup>262</sup> See “Processing Absentee Ballots” on page 60.

<sup>263</sup> W. Va. Code §3-3-5(j).

<sup>264</sup> W. Va. Code §3-3-5(k).

<sup>265</sup> W. Va. Code §3-3-3(a).

Potential community voting locations must:

- Be available for use during the early voting period;
- Have the necessary facilities to accommodate early voting requirements;
- Have adequate space for equipment, workers, and voters; and
- Have adequate security, public accessibility, and parking.

These additional community locations must be open for at least five (5) consecutive days during the early voting period, though they are not required to operate for the entire period. If multiple community voting locations are designated, each must be utilized for an equal number of voting days and hours.<sup>266</sup>

### ***Electioneering***

Electioneering is prohibited within one hundred (100) feet of the designated entrance to a polling place, including early voting locations.<sup>267</sup>

Electioneering is defined as follows: “No person may do any electioneering nor may any person display or distribute in any manner, or authorize the display or distribution of, any literature, posters, or material of any kind which tends to influence the voting for or against any candidate or any public question.”<sup>268</sup>

Additionally, during the Early Voting period only, electioneering is prohibited on the entire property of the early voting location, even if the property extends beyond one hundred (100) feet from the entrance.<sup>269</sup>

### ***Staffing***

The county clerk must assign at least two (2) individuals of different political parties to assist with early voting. Before beginning their duties, those staffers must take the receiving members’ oath, which is available on the West Virginia Secretary of State’s website.<sup>270</sup>

### ***Voting Procedure***

To submit an early voting ballot, the voter shall clearly state his or her name and address upon entering the election room. The voter shall also provide a form of valid photo identification. If the voter is properly registered, the representatives will issue all necessary ballot materials. If the representatives determine that the voter is not properly registered in that precinct, the clerk or

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<sup>266</sup> W. Va. Code §3-3-2a(b).

<sup>267</sup> W. Va. Code §3-9-9.

<sup>268</sup> W. Va. Code §3-3-2a(d)(5).

<sup>269</sup> W. Va. Code §3-3-2a(d)(5).

<sup>270</sup> Oath may be found at:

<https://sos.wv.gov/FormSearch/Elections/Administrators/Oath%20of%20Election%20Commissioners%20and%20Poll%20Clerks.pdf>.

a representative will challenge the vote.<sup>271</sup>

The voter then completes the ballot alone *or* with assistance, as prescribed by the rules for assisting voters.<sup>272</sup> Once completed, the ballot will be placed in a locked ballot box secured by two (2) locks with one key by the president of the county commission and the other by the county clerk, to be counted on Election Night.<sup>273</sup>

## **Ballot Counting Procedures for Early and Absentee Voting**

Absentee and early voting ballots are tabulated at the close of the polls on Election Night, in accordance with the procedures for the voting system in use.

In counties use paper ballots, the receiving board must first process the absentee ballots and deposit them into the appropriate ballot box. The ballot boxes must be opened in the presence of the county clerk and two representatives of opposite political parties. The ballots are separated by precinct and then delivered to the polls to be opened and counted. The receiving board will then count the votes as normal.

If the counties use optical scan systems, the ballot boxes are delivered to the central counting center and opened in the presence of the county clerk and two representatives of opposite political parties. Then, the vote counting will proceed according to standard procedures.<sup>274</sup>

## **Absentee Ballot Voter Assistance**

Providing assistance to voters who are voting absentee is generally prohibited. However, a voter may declare at the time of applying for an absentee ballot that he or she requires assistance due to one of the following reasons:

- Blindness;
- Disability;
- Advanced age; or
- Inability to read or write.

Upon receiving the ballot, a voter who requires assistance may select any eligible person to assist them. The assisting individual must complete an affidavit affirming that he or she will not induce or persuade the voter to vote a certain way, keep any record of what occurs in the voting booth, or reveal the name of any candidate voted for by the voter.

Note that there are no statutory limitations on who may assist a voter in *applying* for an absentee ballot, if such assistance is needed. Restrictions apply only to assistance in the act of voting the

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<sup>271</sup> W. Va. Code §3-3-3(d).

<sup>272</sup> W. Va. Code §3-3-4.

<sup>273</sup> W. Va. Code §3-3-3(g)(3).

<sup>274</sup> W. Va. Code §3-3-8.

ballot itself.<sup>275</sup>

## Absentee Ballot Challenge

The official supervising absentee voting may challenge an absentee voter's ballot on any of the following grounds:

- The application for an absentee ballot has not been properly completed;
- Any statement or declaration on the absentee ballot application is false;
- The applicant is not registered to vote in the precinct of his or her residence;
- The person voting absentee in person receives assistance without being eligible, including when:
  - The affidavit of the person receiving assistance provides no sufficient reason;
  - The person receiving assistance did not make the required affidavit; or
  - The person is not so illiterate that they cannot read the ballot, or not so physically disabled that they cannot mark it;
- The person voting absentee by mail received assistance without being qualified to receive it; or
- The person has voted absentee by mail on four (4) consecutive occasions due to being out of the county; except this may not be grounds for challenge if the person is:
  - A U.S. citizen residing outside of the United States;
  - A member of the uniformed services, or his or her spouse or dependent; or
  - A college student living outside of his or her home county.<sup>276</sup>

Any election commissioner or poll clerk in a precinct may also challenge an absentee ballot if:

- The application was not properly completed;
- Any statement or declaration on the application is false;
- The person voting absentee is not registered to vote in the precinct;
- The person voting absentee in person received assistance without being qualified for one of the reasons outlined above;
- The person voting absentee by mail received assistance but was not qualified;
- The person who voted absentee also voted in person on Election Day;
- The person voted absentee under UOCAVA but was physically present in the county where registered between the opening and closing of the polls on Election Day; or
- For any other reason for which a ballot could be challenged if cast in person on Election Day.<sup>277</sup>

No challenge may be made to an absentee ballot if the voter was registered and qualified to vote under W. Va. Code §3-3-1(a).

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<sup>275</sup> W. Va. Code §3-3-6.

<sup>276</sup> W. Va. Code §3-3-10(a).

<sup>277</sup> W. Va. Code §3-3-10(b); W. Va. Code §3-1-41(b).

All challenged absentee ballots are to be sent to the board of canvassers uncounted. The board will determine the validity of the challenge according to W. Va. Code §3-1-41. If the challenge is determined to be unfounded, the ballot will be shuffled in with the regular ballots and counted. If the challenge is upheld, the ballot will remain uncounted.<sup>278</sup>

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<sup>278</sup> W. Va. Code §3-1-41(e).

# 6 CHAPTER SIX: Election Day Voting

## Delivery and Return of Ballot Equipment

### *General Responsibilities of the County Clerk*

The county clerk is responsible for providing the following materials necessary for conducting elections:

- Poll books;
- A list of all precincts in the county;
- Tally sheets;
- Ballot boxes;
- Voting booths;
- Registration records and forms;
- Durable envelopes for election returns;
- Blank forms for certifying returns; and
- Any additional supplies needed to administer voting.<sup>279</sup>

The county commission is responsible for arranging polling places, ensuring that each location has heating or air conditioning and at least two (2) voting booths. If the county commission determines that a suitable room or building is not reasonably available in the precinct, it may designate a location in an adjacent precinct as close as possible.<sup>280</sup>

At least one (1) day before the election, the county clerk must appoint one (1) election commissioner or poll clerk from each precinct to receive the voting materials. It is the duty of these appointed officials to deliver the materials to their precincts – ensuring that any seals remain intact – in time for the election.

All ballots will be in unbroken, sealed packages and in quantities “not in excess of one and one-twentieth (1.05) times the number of registered voters in the precinct.”<sup>281</sup>

The clerk must provide each precinct with two (2) ballot boxes and two (2) locks, along with an appointed receiving and counting board.

In primary elections, ballots for each political party must be separately signed, sealed, and prepared in equal quantities. Copies of the poll books must be supplied for each party represented on the ballot.

If the appointed commissioner or poll worker fails to appear to collect the ballot materials, the county clerk must dispatch the materials by a special messenger, who may be paid \$5 plus

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<sup>279</sup> W. Va. Code §3-1-22.

<sup>280</sup> W. Va. Code §3-1-23.

<sup>281</sup> W. Va. Code §3-1-24(c).



mileage.<sup>282</sup>

If the ballots or ballot boxes are delivered to the designated messenger but subsequently lost or destroyed, the messenger must report the loss immediately to the county commission. The commission must then promptly send replacement materials via another special messenger.

### ***Electronic Voting Device Delivery***

The county clerk is responsible for delivering electronic vote-recording machines and electronic poll book devices no later than one (1) hour before polls open, and this must occur in the presence of the precinct election commissioners. The machines must remain sealed to prevent use and tampering until immediately before the polls open. The precinct election commissioners must certify in writing that the machines were sealed and delivered in their presence, and that the seals were broken in their presence immediately prior to use.<sup>283</sup>

An initial check must be performed on the electronic poll books to ensure they are functioning properly. If a poll book is found not to be functioning properly, the county clerk must dispatch a replacement in accordance with the emergency delivery rules. Physical poll books may accompany electronic poll books for backup or reference purposes.<sup>284</sup>

### ***Returning Supplies***

Voting supplies must be returned after the completion of the count, tabulation, and posting of the certificate of results. One (1) election commissioner or poll clerk from each political party at the precinct shall be responsible for delivering the supplies to the county clerk.<sup>285</sup>

## **Registered Voters**

Citizens of the state are entitled to vote in all elections held within the precincts of the counties and municipalities in which they reside.

However, the following groups are prohibited from voting and must cast a provisional ballot:

- Persons not registered to vote;
- Minors;<sup>286</sup>
- Persons declared mentally incompetent by a court of competent jurisdiction;
- Persons convicted of treason, a felony, or bribery in an election; and
- Persons who are not bona fide residents of the state, county, or municipality in which they offer to vote.<sup>287</sup>

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<sup>282</sup> W. Va. Code §3-1-25.

<sup>283</sup> W. Va. Code §3-4a-16.

<sup>284</sup> W. Va. Code §3-4a-17.

<sup>285</sup> W. Va. Code §3-5-16.

<sup>286</sup> Minors may be permitted to vote in a primary election if they will reach the age eighteen (18) before the next general election.

<sup>287</sup> W. Va. Code §3-1-3.

## Signature Poll Books

Each page of the poll book must include a line denoting the precinct number, district name, county name, and the date of the election being conducted. The columns should be headed as follows:

- Number of Voters;
- Signature of Voter; and
- Challenge of Voter.

Poll books will also contain the oaths for commissioners of election and poll clerks.<sup>288</sup>

Upon entering the polling place and stating an intention to vote, each voter must sign their name in the poll book. The signature will be used to confirm the voter's identity in the event of a challenge.

## Procedure

### *Days and Hours of Election*

General elections are held statewide on the first (1<sup>st</sup>) Tuesday after the first (1<sup>st</sup>) Monday in November of even-numbered years.

Primary elections are held statewide on the second (2<sup>nd</sup>) Tuesday in May.

For *all* elections—primary, general, and special—the polls open at 6:30 a.m. and close at 7:30 p.m. on Election Day.<sup>289</sup>

### *The Voting Process*

A person desiring to vote in an election shall clearly state his or her name and residence to one of the poll clerks, who will then repeat the information back. The voter must also present a valid form of photo identification, which the clerk will inspect and confirm that the information on the document conforms to the voter's registration record. If any doubt exists, the ballot must be cast as provisional.

If the voter is unable to furnish a valid identifying document that includes his or her photograph, or if the clerk determines that the document does not qualify, the voter may vote a provisional ballot after signing an affidavit affirming his or her identity. The provisional ballot will be counted only after the voter's eligibility is confirmed by comparing the signature on the affidavit to the signature on file.<sup>290</sup>

If the poll clerk determines that the individual is a duly registered voter, the voter will sign his or

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<sup>288</sup> W. Va. Code §3-1-22.

<sup>289</sup> W. Va. Code §3-1-31.

<sup>290</sup> W. Va. Code §3-1-34(a)(5).

her name - or otherwise fix their mark – to the poll book.<sup>291</sup> to the poll book. The two (2) poll clerks will then sign their names in the appropriate space and issue a ballot to the voter.

If the voter returns a “spoiled” ballot, the poll clerks will mark it “spoiled,” place the “spoiled” ballot in an envelope specifically for “spoiled ballot,” and issue a replacement ballot. The incident must be recorded in the poll book. After the election, the election commissioners will report to the county clerk the number of spoiled ballots, the number of unused ballots, and the number of ballots successfully cast. Unused ballots must be preserved for twenty-two (22) months after the election, following any redistribution to other precincts.<sup>292</sup>

Once the voter has completed the ballot, he or she will fold it so that only the poll clerks’ signatures can be seen, announce his or her name to the commissioner, and hand the ballot to the commissioner. That commissioner will then hand the ballot to another commissioner of a different political party, who will deposit it into the ballot box. The election commissioner may inspect the ballot before it is deposited to ensure it is official and properly signed before depositing it.<sup>293</sup>

After the ballot is returned, the poll clerk will mark a check next to the voter’s name in the poll book to indicate that the voter has voted and will initial the voter’s registration record to indicate the candidate or party voted for. The clerk will also record any challenges to the vote and the subsequent removal of the challenge. In primary elections, the clerk must note the political party for which the voter cast a ballot.

### ***The Ballot***

In general and special elections, all voters in a precinct will receive the same ballot. In primary elections, voters will be given only the ballot of their political party, along with any separate ballots for nonpartisan candidates or public questions.

Voters registered as “independent” or with no party affiliation will receive only nonpartisan and/or public question ballots.<sup>294</sup>

**Ballot Content Requirements.** All ballots must contain the following:

- The words “Official Ballot”, the name of the county, and the election date printed on the back, followed by two (2) blank lines labeled “Poll Clerks.”
- A Perforated tab with a unique sequential number printed at the top, starting at one (1) through the total number of ballots printed.<sup>295</sup>
- Ink color specified by the Secretary of State for each political party in a primary election.<sup>296</sup>

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<sup>291</sup> See “Assisting Voters” on page 76.

<sup>292</sup> W. Va. Code §3-1-36.

<sup>293</sup> W. Va. Code §3-1-34(f).

<sup>294</sup> W. Va. Code §3-1-35.

<sup>295</sup> W. Va. Code §3-5-13(8).

<sup>296</sup> W. Va. Code §3-4A-11a(c).

- Black ink on sufficiently thick paper (for paper ballots).
- A solid-line border at least one-sixteenth (1/16) of an inch wide, trimmed within one-half (1/2) inch of the border.<sup>297</sup>
- Ballot headings separated by heavy lines;
- Ballot headings that display the ballot title, county name, state, type of election, and election date;
  - In primary elections, the heading of political party ballots will include: “Official Ballot of the \_\_\_\_ Party”, which may show the party symbol.
  - In general elections, the heading will contain the words “Official Ballot, General Election,” followed by each party’s emblem and name, in compliance with W. Va. Code §3-6-2(c).
  - In nonpartisan elections or for public questions, the heading must comply with W. Va. Code §3-5-13(2)(A)-(B).

Ballots will also include:

- Offices arranged in columns, left to right, separated by heavy lines and printed in bold type at least eight (8) point: National Ticket, State Ticket, and County Ticket.<sup>298</sup> In presidential years, include “National Convention.” In nonpresidential years, include “District Ticket.”
- The district/division number, if applicable, under each office, along with “Vote for \_\_\_\_” (with the number to be elected) or “Vote For Not More Than \_\_\_\_” (in multicandidate elections).
  - The office title and applicable instructions may span the width of the ballot if it is centered among the respective columns.<sup>299</sup>
- Limitations on the number to be elected, nominated, or appointed to an office printed in bold type beneath the candidates’ names.
- In counties with more than three (3) county commissioners and an equal number of magisterial districts, each county commission seat must appear separately, including the district name and “Vote for One” printed below the office name.
- Clearly shown areas where the voter should mark his or her choice(s).<sup>300</sup> For paper ballots, a square in dark lines must be to the left of each name, arranged in a perpendicular column.<sup>301</sup>
- A space for voters to write in the name of a candidate who is not on the ticket.<sup>302</sup> The words “WRITE-IN IF ANY” are to be printed, where applicable, under each line for write-ins. The lines are to be opposite a position to mark the vote.<sup>303</sup>

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<sup>297</sup> W. Va. Code §3-5-13(8).

<sup>298</sup> W. Va. Code §3-5-13a.

<sup>299</sup> W. Va. Code 3-5-13(C).

<sup>300</sup> W. Va. Code §3-5-13; W. Va. Code §3-6-2.

<sup>301</sup> W. Va. Code §3-5-13(D).

<sup>302</sup> W. Va. Code §3-6-2(d)(4).

<sup>303</sup> W. Va. Code §3-4A-11a(b)(6).

- The name and ticket of each recognized political party (W. Va. Code §3-1-8), and party names for any group nominating two (2) or more candidates by petition.<sup>304</sup>
  - Political parties are ordered based on the party whose presidential candidate received the highest number of votes during the last presidential election - to be placed in the left, or first column, from highest to lowest.
  - Any parties who had no candidates for president in the previous election appear in the order of when their final certificates of nomination were filed.<sup>305</sup>
- For public questions: a heading clearly stating the purpose of the election.<sup>306</sup>
- The name of every candidate in capital letters (minimum 8-point type),<sup>307</sup> staggered (if possible) with a thin line separating each candidate.<sup>308</sup>
  - Order is determined according to drawing by lot.<sup>309</sup>
- The residence of every candidate printed in lowercase letters beneath each name.<sup>310</sup>
- Instructions directing voters to another column or page if a single office's candidates extend beyond the page/column, ensuring near-equal distribution of names and clear directions.<sup>311</sup>
- Constitutional amendments placed after offices and before public questions, with large headings in bold type as required by the resolution.<sup>312</sup>
  - The public question must be specifically authorized under the West Virginia Constitution or ordered by the appropriate governmental body.<sup>313</sup>
- The word "sample" prominently printed on sample ballots, which:
  - May be printed in red ink.
  - Cannot have printing on the back.
  - Must not obscure candidate names.<sup>314</sup>
- In presidential election years, the words "For election in accordance with the plan adopted by the party and filed with the Secretary of State" follows the names of candidates for delegate to the national convention.<sup>315</sup> Also, candidates for President and Vice President for each party are placed beside a brace with a single voting position.<sup>316</sup>
- In general elections, for boards of education, a separate ballot labeled "Nonpartisan Board

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<sup>304</sup> W. Va. Code §3-6-2(a).

<sup>305</sup> W. Va. Code §3-6-2(c)(3).

<sup>306</sup> W. Va. Code §3-6-2.

<sup>307</sup> W. Va. Code §3-5-13; W. Va. Code §3-6-2(b).

<sup>308</sup> W. Va. Code §3-6-2(d)(3).

<sup>309</sup> W. Va. Code §3-5-13a(b) if a primary election; W. Va. Code §3-6-2(d)(2) if a general election.

<sup>310</sup> W. Va. Code §3-5-13(4)(B).

<sup>311</sup> W. Va. Code §3-5-13(4)(D).

<sup>312</sup> W. Va. Code §3-6-2(e).

<sup>313</sup> W. Va. Code §3-6-2(f).

<sup>314</sup> W. Va. Code §3-5-13; W. Va. Code §3-6-3; see "Ballots and Preparation" on page 83 for color requirements in primaries.

<sup>315</sup> W. Va. Code §3-5-13; W. Va. Code §3-6-2(b).

<sup>316</sup> W. Va. Code §3-6-2(d)(1).

of Education.”<sup>317</sup>

- In primary elections, if no candidate is nominated for an office, the phrase “No Candidate Filed” appears. If there are multiple vacancies, the Secretary of State may approve a short description in place of the words “No Candidate Filed.”<sup>318</sup>

#### **Order of Offices on State and County Ballots.**

- NATIONAL TICKET: President (and Vice President in the general election), U.S. Senator, U.S. House of Representatives.
- STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, State Senator, House of Delegates, multicounty offices, state executive committee.
- NONPARTISAN JUDICIAL BALLOT: Supreme Court of Appeals, Intermediate Court of Appeals, Circuit Court Judge, Family Court Judge, Magistrate.<sup>319</sup>
- COUNTY TICKET: Circuit Clerk, County Commissioner, County Clerk, Prosecuting Attorney, Sheriff, Assessor, Surveyor, Congressional District Executive Committee, Senatorial and Delegate District Executive Committees (multicounty districts).
- NONPARTISAN BALLOT: Board of Education, Conservation District Supervisor, or ballot questions.
- DISTRICT TICKET: County Executive Committee.
- NATIONAL CONVENTION: Delegate to the National Convention (district and at-large).<sup>320</sup>

**Sample Ballot and Publication Requirements.** Ballot commissioners will prepare a sample general election ballot for all political parties, non-party affiliated candidates (if not nominated by an independent party), nonpartisan candidates, and all ballot issues. The sample ballot must be published in a local newspaper and no smaller than sixty-five (65%) percent of actual ballot size.<sup>321</sup>

Ballot commissioners will prepare an official list of nominees for each office, party, and nonpartisan candidate. The list will contain the same information on the actual ballot and be published in local newspapers.<sup>322</sup>

In general elections:

- Offices appear in the same order as on the ballot.
- Candidates for single-seat offices are listed from left to right or top to bottom
- Political party affiliation using one or two-letter initials in parenthesis to the right of the candidate's name.

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<sup>317</sup> W. Va. Code §3-6-2(d)(5).

<sup>318</sup> W. Va. Code §3-5-13(5).

<sup>319</sup> W. Va. Code §3-5-13(2)(A)(i), (ii), (iii), (iv), (v).

<sup>320</sup> W. Va. Code §3-5-13a(a).

<sup>321</sup> W. Va. Code §3-6-3(a), (b).

<sup>322</sup> W. Va. Code §3-6-3(c), (d).

- For multi-seat offices, candidates are grouped by party.<sup>323</sup>

Official lists should be in single or double columns and follow these formatting rules:

- “OFFICIAL LISTS OF NOMINEES AND ISSUES,” county name, “GENERAL ELECTION,” and election date in bold, all capital letters, minimum 10-point font.
- Candidate names and party abbreviations in bold, all capital letters, minimum 10-point font.<sup>324</sup>
- Ballot issues in bold, all capital letters, minimum 12-point font.
- Ballot issue text is no smaller than 8-point font.
- Ballot commissioners may use the facsimile sample ballot format for publishing ballot issues.<sup>325</sup>

**Additional Notes.** If a candidate is nominated to fill a vacancy after ballots are printed, the county clerk will prepare and issue stickers to elections commissioners for each precinct using paper ballots. Stickers must equal the number of printed ballots in that precinct.<sup>326</sup>

A ballot may not offer a voter the option of voting a straight party ticket by one mark or punch.<sup>327</sup>

### ***Electronic Ballots***

Counties throughout the state are permitted to use electronic voting systems for registering, recording, and computing votes. Each county must adopt a policy for securing its equipment, and the county clerk must submit a copy of that policy to the Secretary of State by February 1<sup>st</sup> of each even numbered year. Any changes to the policy must be submitted within thirty (30) days of the change.<sup>328</sup>

For voter instructions in counties utilizing an electronic voting system that uses a screen on which votes may be recorded by stylus or touch, the ballot commissioners shall provide each polling place with a sample ballot that reflects each screen as it will appear on the devices, along with written instructions for operating the system.<sup>329</sup>

Election officers shall offer instruction to any voter upon request before the voter casts their ballot.<sup>330</sup>

Sample ballots may be a photographic reproduction of the absentee ballot; however, they must be altered to reflect the appropriate order of various districts when precinct ballots differ by senatorial, delegate, magisterial, or executive committee districts, or when city precincts contain

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<sup>323</sup> W. Va. Code §3-6-3(c)(2)(A), (B), (C).

<sup>324</sup> W. Va. Code §3-6-3(d)(3)(A), (B).

<sup>325</sup> W. Va. Code §3-6-3(d)(4).

<sup>326</sup> W. Va. Code §3-6-4.

<sup>327</sup> W. Va. Code §3-6-2(g).

<sup>328</sup> W. Va. Code §3-4a-1.

<sup>329</sup> W. Va. Code §3-4A-15(a).

<sup>330</sup> W. Va. Code §3-4A-15(a).

different municipal wards.<sup>331</sup>

For ballots tabulated by electronic means, the offices must appear in the same sequence as prescribed in W. Va. Code §3-5-13a. The layout – whether pages, columns, or rows – may be modified to meet ballot size and compensation limitations, subject to approval by the Secretary of State.<sup>332</sup>

Election officers have a statutory duty to “constantly and diligently maintain a watch in order to see that no person votes more than once, and to prevent any voter from occupying the voting booth for more than five (5) minutes.”<sup>333</sup>

The procedures for electronic voting are the same as for paper voting, except in the return process. Upon completing the ballot, the voter will place it inside the provided secrecy sleeve or envelope, with the stub sticking out. Voters must not remove the stub, as ballots without a stub will not be accepted by the election commissioner.<sup>334</sup>

If the voter fails to complete the ballot and cannot be recalled, any combination of two (2) election commissioners or poll clerks of differing parties will spoil the ballot.

In precincts using electronic systems, when election commissioners prepare their report of the number of voters, spoiled ballots, and unused ballots, they must make four (4) copies. Two (2) copies must be placed in the ballot box, and the remaining two (2) placed in a sealed container provided by the county clerk, to be delivered to the county clerk at the central counting center.

### ***Non-Primary Elections***

In general and special elections, additional procedures apply to marking the ballot:

- To vote for official write-in candidates, voters may write the candidate’s name in ink or affix a sticker, label, or ink stamp in the space designated for write-in votes.
- On paper ballot systems, voters may write or otherwise place the candidate’s name in any location on the face of the ballot, so long as the voter’s intention is clear.
- If the voter marks more names than there are persons to be elected to an office, or if it is impossible to determine the voter’s choice, the vote for that office will not be counted. The intention is considered clear if the write-in includes either the first or last name of the candidate.
  - However, if two (2) or more candidates share the same first or last name, the voter’s intention will only be considered clear if both the first and last name of the intended candidate are included.<sup>335</sup>

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<sup>331</sup> W. Va. Code §3-6-3(b)(3).

<sup>332</sup> W. Va. Code §3-5-13(3)(B).

<sup>333</sup> W. Va. Code §3-4a-19(a).

<sup>334</sup> W. Va. Code §3-4a-19(j).

<sup>335</sup> W. Va. Code §3-6-5(b).



### ***Valid Voter Identification***

West Virginia's voter identification law requires a person desiring voter to present a valid identifying document to the poll clerks.<sup>336</sup> An identifying document is considered valid if it:

- Has been issued by the State of West Virginia, one of its subdivisions, or the United States Government;
- Contains the name of the person desiring to vote; and
- Contains a photograph of the person desiring to vote.<sup>337</sup>

The following documents may be considered valid if they meet the above criteria:

- A valid West Virginia driver's license or state identification card issued by the West Virginia Division of Motor Vehicles;<sup>338</sup>
- A valid driver's license issued by another state;
- A valid U.S. passport or passport card;
- A valid employee identification card with a photograph of the voter issued by any branch or entity of the United States Government, the State of West Virginia, or by any county, municipality, or other political subdivision of West Virginia;
- A valid student identification card with a photograph of the voter issued by an institution of higher education or a high school in West Virginia;
- A valid military identification card issued by the United States with a photograph of the voter;
- A valid voter registration card that includes the voter's photograph, issued by a county clerk or the Secretary of State.<sup>339</sup>

An expired document may still be considered valid if presented by a registered voter who is 65 years of age or older, provided the document was not expired on the voter's 65<sup>th</sup> birthday.<sup>340</sup>

If a voter is unable to furnish a valid identifying document, the individual shall be permitted to cast a provisional ballot after executing an affidavit affirming his or her identity. The provisional ballot may be counted once the election authority verifies the individual's identity by comparing the signature on the affidavit with the signature on file. of the individual by comparing that individual's signature to the current signature on file.<sup>341</sup>

In lieu of presenting a valid identifying document, a registered voter may be accompanied at the

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<sup>336</sup> W. Va. Code §3-1-34(a).

<sup>337</sup> W. Va. Code §3-1-34(a)(1).

<sup>338</sup> A driver's license or identification card issued to individuals who have religious objections to being photographed, in accordance with W. Va. Code §17B-2-1(f)(4), is considered a valid identifying document under W. Va. Code §3-1-34(a)(2)(A).

<sup>339</sup> The county clerk or the Secretary of State may not charge or collect a fee for the application for, or issuance of, a voter registration card that includes the voter's photograph. W. Va. Code §3-1-34(a)(1)(G).

<sup>340</sup> W. Va. Code §31-1-34(a)(3).

<sup>341</sup> W. Va. Code §3-1-34(a)(6).

polling place by an adult who has known the voter for at least six (6) months. The accompanying adult must:

- Sign an affidavit, on a form prescribed by the Secretary of State, affirming under oath that they have known the registered voter for at least six (6) months; and
- Present a valid identifying document containing the accompanying adult's name, address, and photograph.

A poll worker may also allow a voter to cast a ballot without presenting a valid identifying document if the poll worker has known the voter for at least six (6) months.<sup>342</sup>

A voter who is voting in person at a polling place located within a state-licensed care facility, and who resides in that facility, is not required to provide proof of identification to vote.

If a participant in the Address Confidentiality Program executes a voter identity affidavit, the participant's residential and mailing addresses are confidential and may only be used for the statutory and administrative purposes of West Virginia's voter identification law.<sup>343</sup>

### ***Individuals Prohibited from the Booth***

No person other than the voter may be within five (5) feet of the voting booth while the voter is voting, and no person may communicate with the voter in any manner, unless the person is:

- An election officer performing official duties under W. Va. Code §3-4a-19; or
- An individual assisting the voter pursuant to W. Va. Code §3-4a-22.

No voter may enter the booth with any recording or electronic device intended to interfere with the voting process.<sup>344</sup>

### **Marking the Ballot**

A voter has only five (5) minutes to occupy the poll booth and cast his or her vote.<sup>345</sup>

A voter may spoil his or her ballot by writing "spoiled" across the face of the ballot or by otherwise defacing or mutilating it. If the voter returns a spoiled ballot, the poll clerks shall dispose of the ballot and issue a new official ballot to the voter.<sup>346</sup> When a ballot is returned in this manner, the clerks must clearly write "spoiled" on the ballot and record the incident in the poll book.

Following the election, the election commissioners shall report to the county clerk the number of ballots spoiled, ballots remaining unused, and ballots successfully cast. The unused ballots must be preserved – after redistributing as needed to other precincts - until twenty-two (22)

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<sup>342</sup> W. Va. Code §3-1-34(a)(4).

<sup>343</sup> W. Va. Code §3-1-34(a)(8).

<sup>344</sup> W. Va. Code §3-4a-23.

<sup>345</sup> W. Va. Code §3-4a-19.

<sup>346</sup> W. Va. Code §3-1-36.

months after the election.

If a voter fails to complete the ballot, leaves the polling place, and cannot be recalled, any combination of two (2) election commissioners or poll clerks of differing parties shall spoil the ballot.

If two (2) or more ballots are found folded or rolled together and the names voted for are identical, only one (1) ballot will be counted. If the names voted for are different, neither ballot shall be counted. Matching numbers shall be placed on such ballots to indicate that they were submitted together.

If more than the proper number of names are marked for any office, the vote for that office shall not be counted.

If a vote is cast for a person who is not a resident of the appropriate county, the vote for that office shall not be counted.

If it is impossible to determine the voter's choice of candidate, the vote shall not be counted for that candidate.<sup>347</sup>

## **Assisting Voters**

### ***Accessible Polling Places***

In fulfilling its duty to provide a suitable polling place, the county commission must ensure that at least one (1) parking space is reserved for handicapped voters.<sup>348</sup>

Each precinct must have at least one voting system accessible to individuals with disabilities in any federal election. This includes nonvisual accessibility for voters who are blind or visually impaired, and must provide the same opportunity for access, participation, privacy, and independence as is afforded to other voters.<sup>349</sup>

If the county clerk verifies that a precinct at which a person with a disability is registered to vote is not accessible, the clerk may transfer that voter's registration to the nearest accessible polling place within the county.

Requests for such transfer must be received by the county clerk no later than thirty (30) days prior to the election. If a request is not made by this deadline, the voter may cast a provisional ballot at an accessible polling place within the same county. If the county commission determines that the vote is otherwise valid, it shall be counted.

Once a voter's registration has been transferred due to accessibility needs, he or she may continue voting at that accessible precinct for as long as the disability exists or until the original

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<sup>347</sup> W. Va. Code §3-6-7.

<sup>348</sup> W. Va. Code §3-1-23.

<sup>349</sup> W. Va. Code §3-1-49(c).

precinct becomes accessible.

Alternatively, if the polling place is not accessible and not voters are currently voting or waiting inside, a voter with a disability may vote absentee from an automobile outside the polling place in the presence of an election commissioner.<sup>350</sup>

### ***Assistance in Completing Ballots***

An otherwise duly registered voter may request and receive assistance at the polls if he or she requires assistance for at least one of the following reasons:

- Blindness;
- Disability;
- Extreme advanced age; or<sup>351</sup>
- Inability to read and write.

Once assistance has been requested and approved, the voter may receive assistance from a person of the voter's choice provided that person is not:

- The voter's present or former employer;
- An agent of the voter's present or former employer;
- An officer or agent of a labor union of which the voter is a current or former member; or
- A candidate on the ballot, or an official write-in candidate.<sup>352</sup>

An election officer or any other person who assists a voter must sign a written oath before providing assistance. The oath must state that the person providing assistance will not override the voter's preferences, mislead the voter into voting for someone not intended, and that the voter is casting the ballot free from intimidation or manipulation. This requirement does not apply if the voter is blind and a physician's certification of that fact is on file with the county clerk.<sup>353</sup>

A voter may also request assistance from poll clerks or ballot commissioners at the polling place. In such cases, assistance must be provided by any two (2) election officers of different political party affiliations. The voter will make his or her choices regarding candidates and public issues, and the officers will mark the ballot accordingly.<sup>354</sup>

Election commissioners or poll clerks may challenge a vote on the grounds that the voter was not eligible to receive assistance.<sup>355</sup>

Among the ballot supplies, the county clerk shall provide a form entitled "List of Assisted Voters,"

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<sup>350</sup> W. Va. Code §3-1-34; W. Va. Code §3-3-5(e)

<sup>351</sup> W. Va. Code §3-3-1(b)(1)(B).

<sup>352</sup> W. Va. Code §3-3-4(a).

<sup>353</sup> W. Va. Code §3-1-34(e)(5)(B).

<sup>354</sup> W. Va. Code §3-4a-22; W. Va. Code §3-1-34(e), (f), (g), (h), (i).

<sup>355</sup> W. Va. Code §3-3-4(c).

on which commissioners shall record the:

- The name of each voter receiving assistance’
- The poll slip number of the voter; and
- The signature of the person or commissioners who provided assistance.

If no voters received assistance in that precinct, the commissioners shall execute an oath attesting to that fact. The list must be returned to the county clerk and preserved, along with any oaths and affirmations, for twenty-two (22) months. These records may be used to update voter registration files.<sup>356</sup>

### ***Restrictions on Presence at the Polls***

Other than election officers and voters entering or exiting the election room to vote, no one may be within one hundred (100) feet of the outside entrance to the building housing the polling place while the polls are open, unless the individual resides, conducts business, or is passing through the area on legitimate business.<sup>357</sup>

If delivering a voter by car or other motor vehicle, a person may enter the one hundred (100) foot zone to drop the voter off but must immediately exit the area unless waiting to pick the voter up after voting. However, if the driver is also assisting a voter in accordance with the assisting voter rules, the vehicle may remain.<sup>358</sup>

Election commissioners shall limit the number of voters in the election room as necessary to preserve order. No person may come within five (5) feet of the voting booth or compartment where a ballot is being prepared, except the voter or a poll clerk called upon to assist.

No person other than election officers and voters depositing their ballots, may be within five (5) feet of any ballot, except by order of the board of election commissioners for purposes of maintaining order and enforcing the law.<sup>359</sup>

Only one (1) person may occupy a voting booth at a time, and no person may remain in the booth for more than five (5) minutes. A voter claiming a disability is permitted up to ten (10) minutes.<sup>360</sup>

While in the election room, voters may not speak to anyone other than poll clerks or election commissioners.

These restrictions do *not* apply to individuals assisting blind voters or to children under fourteen (14) years of age who are accompanying their parent or guardian. Any dispute regarding a child’s

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<sup>356</sup> W. Va. Code §3-3-4(e).

<sup>357</sup> W. Va. Code §3-1-37(a).

<sup>358</sup> W. Va. Code §3-1-37(b).

<sup>359</sup> W. Va. Code §3-1-37(c).

<sup>360</sup> See “Assistance in Completing Ballots” on page 77.

age will be resolved by the election commissioners.<sup>361</sup>

## **Closing the Polls**

For every primary, general, or special election, the polls shall open in each precinct 6:30 a.m. and close at 7:30 p.m.<sup>362</sup>

When the polls are to be closed, an election commissioner must proclaim the closing “in a loud and audible tone of voice” to those outside the polling area. This proclamation must be made continuously for a full (1) minute, and the time of the proclamation must be recorded in the poll book.

Voters who are inside the polling place or in line outside at the time the polls close will be permitted to vote. Beginning with the last voter in line, election commissioners from each political party shall issue “waiting-voters” permits to those waiting. Each permit must be signed by both commissioners and by the voter in the commissioners’ presence. When the voter signs the poll book to vote, signature will be compared to the one on the permit, which shall be attached to the corresponding page in the poll book.<sup>363</sup>

In precincts using electronic voting machines, all machines must be sealed after the last vote is cast. Any unused ballots must be returned to the county clerk.<sup>364</sup>

## **Counting Ballots**

In precincts where a single (1) election board serves, the receiving board shall count the votes. In precincts where two (2) election boards are serving together, both the receiving and counting boards shall count and tabulate the votes jointly. This counting must begin immediately after the polls close, and the boards may not adjourn until the work is completed.<sup>365</sup>

To begin the process, if the county clerk has determined that absentee ballots are to be counted in the precincts where the voters are registered, those ballots must first be processed and added to the ballot box to be counted.

Once this step is completed - or if absentee ballots are instead counted at a central counting center - the board shall record the total number of voters who have voted, subtract the number of challenged votes, which verify that the resulting number matches the number of ballots remaining in the box. The board shall also report the number of unvoted and spoiled ballots.<sup>366</sup>

The ballot boxes shall then be opened, and all votes tallied in the presence of the entire election

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<sup>361</sup> W. Va. Code §3-1-37(e).

<sup>362</sup> W. Va. Code §3-1-31.

<sup>363</sup> W. Va. Code §3-1-32.

<sup>364</sup> W. Va. Code §3-4a-25.

<sup>365</sup> W. Va. Code §3-6-6; see W. Va. Code §3-1-33 for double board procedures.

<sup>366</sup> W. Va. Code §3-6-6.

board. Commissioners shall:

- Remove one (1) ballot from the box at a time and determine whether it is properly signed by the poll clerks of the receiving board;
  - If the ballot is not properly signed, it shall be placed, without being unfolded, into a designated envelope for unsigned ballots.
    - All ballots without proper signatures shall be challenged.
    - If an accurate accounting of the ballots is made and no other challenge exists against the voter, the vote will be counted at canvass.
  - If the ballot is properly signed, the commissioner shall give it to a team of commissioners of opposite political parties, who shall read off aloud the votes marked for each office;
    - Write-in votes for individuals who are not official write-in candidates shall be disregarded.
- Keep a running tally of the number of ballots as they are removed. When that tally equals the number of voters entered in the poll book, minus all provisional ballots, any additional ballots found in the box shall be placed – unopened - into the envelope for unsigned ballots not counted (without unfolding them). The number of excess ballots shall be recorded on the envelope.
- Record the vote totals on tally sheets, showing the number of votes received by each candidate for each office, and the votes for and against each issue on the ballot.
- String the ballots on a thread once the reading and recording of the votes is complete.<sup>367</sup>

In precincts where two (2) boards are appointed, the counting board shall counts votes throughout the day as voting occurs, while the receiving board manages the polls. At the close of polls, both boards shall meet and complete the counting process as described above.<sup>368</sup>

If elections for two (2) or more precincts are held in the same building, each precinct must have its own receiving board, and no two precincts may share a counting board.<sup>369</sup>

### ***Election Returns***

Once the counting is complete and the results ascertained, election officials shall prepare and sign, under oath,<sup>370</sup> three (3) certificates of result on a form provided by the Secretary of State. Each certificate must include the complete returns of the election, listing the name of each office and candidate on the ballot – including write-in candidates - and indicating the number of votes received by each candidate, written both in words and in numerals. The certificate must also include each issue on the ballot and the number of voters cast for and against each issue also expressed in words and numbers.

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<sup>367</sup> W. Va. Code §3-6-6.

<sup>368</sup> W. Va. Code §3-1-33.

<sup>369</sup> W. Va. Code §3-1-29(a); W. Va. Code §3-1-5(a).

<sup>370</sup> See W. Va. Code §3-5-15(c) for the oath.

The certificates are to be sealed in separate envelopes, and each commissioner and poll clerk shall sign across the seal.

Two (2) of the sealed certificates of result shall be delivered to the county clerk. The county clerk shall then mail one (1) of the sealed returns to the Secretary of State by certified mail within forty-eight (48) hours of receiving it.<sup>371</sup>

One (1) unsealed certificate shall be posted outside the front door of the polling place.

After the counting, tabulation, and posting of certificates are completed, the election supplies must be gathered, sealed, and returned to the county clerk.<sup>372</sup>

## **Partisan Primary**

### ***Dates and Process***

Primary elections are held at the voting place in each precinct in the state on the second (2<sup>nd</sup>) Tuesday in May of every even-numbered year. The opening and closing times of the polls are the same as those for general elections.

In primaries elections preceding a presidential election (every four [4] years), voters elect persons to serve as delegates to the national convention of their political party, in accordance with a plan adopted by the state party.

The state party's plan must specify the method for electing delegates and alternate delegates in each congressional district, in compliance with the national party rules.<sup>373</sup> The governing body of each political party in the state must certify the party plan – adopted by the party chairperson and signed by him or her – and file it with the Secretary of State no less than one hundred twenty (120) days before the primary election. The plan shall provide for the following:

- Voters of each political party shall elect, in each congressional district, the number of persons to serve as delegates to the national convention to which the district is entitled;
- If the rules of the national party do not require apportionment of delegates based on presidential candidate commitment, the individuals receiving the highest number of votes will become delegates, and those with the next highest number of votes will become alternate delegates;
- If the national party requires proportional apportionment of delegates based on vote percentages, the state party plan shall specify the number of delegates and alternates to be elected under that system, the method of apportionment, and how the Secretary of State shall determine which individuals are elected;
- If fewer delegates or alternates are elected in the primary than the number to which the district is entitled, the state party shall appoint individuals from the congressional district

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<sup>371</sup> W. Va. Code §3-5-15(d).

<sup>372</sup> W. Va. Code §3-6-8.

<sup>373</sup> W. Va. Code §3-5-2(a), (b).



to fill the remaining positions, unless party rules provide otherwise; and

- The number of delegates each congressional districts is entitled to elect shall be apportioned in the same ratio to the total number of delegates elected in all congressional districts across the state.<sup>374</sup>

Every presidential primary election will include the statement: “For election in accordance with the plan adopted by the party and filed with the Secretary of State” following the names of all delegate candidates.

If the state party fails to file a plan with the Secretary of State, voters will elect the number of persons the district is entitled to as delegates-at-large. In that case, the individuals receiving the highest number of votes in the district will serve as delegates, and those delegates shall appoint their own alternates. Notice of such alternate appointment must be provided to the Secretary of State by registered mail within forty (40) days of the primary election.<sup>375</sup>

If a presidential candidate for a political party timely files a certificate of announcement and pays the required filing fees to the Secretary of State, the candidate’s name will be placed on the ballot, and votes for that candidate may be cast.<sup>376</sup>

At each primary election, voters of each political party shall nominate candidates for each office to be filled at the general election. A plurality of votes is sufficient for nomination. If only one (1) candidate is to be nominated, the candidate receiving the highest number of votes is nominated. If more than one (1) candidate is to be nominated, the appropriate number of candidates receiving the highest vote totals in the relevant division shall be declared party nominees. These provisions do not apply to the following:

- Candidates for county commissioner, who are nominated under Article IX, Section 10 of the W. Va. Const.,<sup>377</sup>
- Members of a county board of education, who are elected under W. Va. Code §3-5-6; and
- Candidates for the House of Delegates, who are nominated and elected with additional residence requirements pursuant to W. Va. Code §1-2-2.<sup>378</sup>

In the event of a tie vote in a primary election, the political party's nominee shall be determined by the executive committee of the party for the division in which the candidate ran.

### ***Election of County Board of Education and Judicial Offices***

Elections for county boards of education are held on the same day as the primary election but appear on a nonpartisan ballot. No more than two (2) members may be elected from - or serve - the same magisterial district. Board members serve either full terms of four (4) years or unexpired

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<sup>374</sup> W. Va. Code §3-5-2(c).

<sup>375</sup> W. Va. Code §3-5-2(e).

<sup>376</sup> W. Va. Code §3-5-3.

<sup>377</sup> W. Va. Const. Art. 9 §10; W. Va. Code §7-1-1b.

<sup>378</sup> W. Va. Code §3-5-4.

terms of two (2) years. Candidate eligibility is determined at the time of certification

Eligibility of candidates is determined at the time of certification of the election and is based on the magisterial district residence of incumbent board members whose terms will continue through July 1<sup>st</sup> following the primary election.

- No person is eligible to be declared elected who resides in a district that already has two (2) incumbents;
- No more than one (1) candidate is eligible to be declared elected from a district a that already has one (1) incumbent; and
- A candidate receiving the highest number of votes may be elected to an unexpired two (2) year term, even if there are already two (2) representatives from that district, provided that the number of representatives from that district will be reduced as of July 1<sup>st</sup> following the primary.

Any person elected to an unexpired two (2) year term shall assume the duties of a board member.

During the canvass, the board of canvassers shall declare and certify the election of the required number of eligible candidates receiving the highest number of votes to fill any remaining full terms. The candidates receiving the next highest number of votes may be certified to fill any unexpired terms, as applicable.<sup>379</sup>

Only a plurality of votes is needed to be elected - not a majority. In the event of a tie, the board of canvassers shall resolve the tie within thirty (30) days. If the board fails to decide within that timeframe, the Governor shall make the determination.<sup>380</sup>

Elections for Justices of the Supreme Court of Appeals are also held on the primary election date and appear on the nonpartisan ballot. If more than one (1) justice is to be elected, the election will be held by numbered division. Each division will be tallied separately, and the board of canvassers will declare and certify the candidate receiving the highest number of votes in each division.<sup>381</sup>

Elections for judges of the Intermediate Court of Appeals, circuit courts, family courts, and magistrate courts are likewise held on the primary election date and follow the same election and certification procedures as those for the Supreme Court of Appeals.<sup>382</sup>

### ***Ballots and Preparation***

The ballot commissioners shall prepare a sample ballot for both partisan and nonpartisan candidates, as well as for any ballot issues, and shall publish them in newspapers as specified in

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<sup>379</sup> W. Va. Code §3-5-6.

<sup>380</sup> W. Va. Code §3-6-12.

<sup>381</sup> W. Va. Code §3-5-6a.

<sup>382</sup> W. Va. Code §3-5-6a; W. Va. Code §3-5-6b; W. Va. Code §3-5-6c; W. Va. Code §3-5-6d; W. Va. Code §3-5-6e.

the Code between twenty (20) and twenty-six (26) days prior to the election.<sup>383</sup>

Ballot commissioners shall also prepare a list of all offices, candidates, and issues, including any information that appears on the ballot – such as instructions and additional language. This list shall be published in qualified newspapers on the last day on which a newspaper is published immediately preceding the election, and in the form prescribed by Code.<sup>384</sup>

Separate ballots shall be printed on different colored paper for each political party participating in the election, and no two (2) parties' ballots shall be the same color or tint. Sample ballots shall also be printed and must be a different color from all other ballots, including their official counterpart.<sup>385</sup>

Primary election ballots differ in some respects from general election ballots in form and content. However, the order of offices on the ballot shall follow the same rules. In cases where multiple candidates file for an office, their positions on the ballot shall be determined by drawing lots. The drawing shall be conducted by the county clerk at 9:00 a.m. on the fourth (4<sup>th</sup>) Tuesday after the close of candidate filing.<sup>386</sup>

The counting process for a primary election is the same as for a general election, except that vote totals are kept and reported separately for voters of each political party and for nonpartisan voters.

The canvass, certification of returns, and recount procedures are the same as those for general elections, except that the disposition of the certificates from the canvass is governed by W. Va. Code §3-5-18.<sup>387</sup>

## Required Postings

Election officials are required by W. Va. Code to post certain notices and items throughout the polling place in the performance of their duties, including the following:

- **Card of General Information:** These cards include the date and time of the election, instructions for mail-in registration and first-time voters, and information about voters' rights and prohibitions. They must be posted both inside and outside the polling place, in areas where voters pass by or wait to vote. The same postings are also required at early in-person voting locations and within the voting area.
- **Sample Ballots:** Two (2) or more copies of sample ballots – printed in a different color than official ballots – must be posted alongside the cards of general information, both inside and outside of the polling place, as well as during early voting.

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<sup>383</sup> W. Va. Code §3-5-10(b).

<sup>384</sup> W. Va. Code §3-5-10(d).

<sup>385</sup> W. Va. Code §3-5-13.

<sup>386</sup> W. Va. Code §3-5-13a.

<sup>387</sup> See "Canvass" on page 88.

- **Official Write-In Candidates:** A list of official write-in candidates must be posted in the same location as the general information cards during both Election Day and early voting.
- **Provisional Ballot Notice:** A notice must be posted in a highly visible location informing voters of their rights when voting provisionally, including the right to inquire about the correct precinct and the penalties for voting in the wrong one.
- **How to Prepare the Ballots:** One (1) instructional card describing how to prepare the ballots for deposit and how to replace a spoiled ballot must be placed in each voting booth by an election commissioner.
- **Certificate of Results:** One (1) unsealed certificate of result for a primary election must be posted on the outside of the front door of the polling place.<sup>388</sup>
- **Certification of Candidates:** In accordance with the Secretary of State's duty to certify candidates for an election, a duplicate of the certification must be posted in the Secretary of State's office and remain there until after the election. The certificate shall include:
  - The name and residence of each candidate;
  - The office for which the candidate is running;
  - The name of the party (if any) the candidate represents;
  - The ballot on which the candidate's name appears; and
  - For candidates for delegate to the national convention, the name of the presidential candidate they support, or the word "uncommitted" if no preference is indicated.<sup>389</sup>
- **Electronic Voting Machine Inspection:** Electronic voting materials shall be made available for inspection during the seven (7) days following the completion of canvass. Any candidate may inspect the sealed materials, provided that a notice of the time and place of the inspection is posted at the central counting center before 9:00 a.m. on the morning of the inspection, so that any person entitled may attend.<sup>390</sup>
- **Handicapped Parking:** At least one (1) parking space must be reserved for handicapped voters at each polling place, and it must be clearly marked as such.

## Prohibition of Electioneering

### *The Polling Place*

The polling place is the location designated by the county commission for voting.<sup>391</sup> The following activities are prohibited inside the polling place:

- No person may approach within five (5) feet of any booth, except voters or individuals

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<sup>388</sup> W. Va. Code §3-5-15.

<sup>389</sup> W. Va. Code §3-5-7.

<sup>390</sup> W. Va. Code §3-4a-28.

<sup>391</sup> W. Va. Code §3-1-23.

assisting voters;

- No person may be within five (5) feet of any ballot box, except by authority of the board of election commissioners;
- No more than one (1) person may occupy a voting booth at any given time;
- A persons may not remain in the voting booth for more than five (5) minutes, or ten (10) minutes if the voter claims a disability; and
- No person may engage in conversation with anyone other than the poll clerks or election commissioners.

These rules do not apply to children under fourteen (14) years of age who are accompanying a legal guardian, or to individuals assisting blind voters.<sup>392</sup>

### ***The Surrounding Area***

In addition to the prohibited acts in the polling place, W. Va. Code extends certain protections to a one hundred (100) foot zone at the polling place. The restricted area is measured from the outside entrance door where the precinct number and American flags are displayed. If multiple doors are marked with numbers and flags, the one hundred (100) foot measurement applies to each of those doors. Before the polls open, election officials must clearly mark the boundary in at least two (2) places.<sup>393</sup>

Additional restrictions apply to activities occurring within the one hundred (100) foot perimeter of the polling place entrance:

- No person other than election officers and voters entering or exiting the election room, may remain within the perimeter while polls are open, unless they reside within the area or are present for legitimate business purposes.
- A person delivering a voter may enter the perimeter to drop the voter off but must exit the area until returning to pick the voter up - unless the driver is also assisting the voter, in which case the vehicle may remain parked within the perimeter.<sup>394</sup>

One heavily restricted activity within the one hundred (100) foot zone is electioneering, which is defined in W. Va. Code as:

- Displaying signs or other campaign paraphernalia;
- Distributing campaign literature, cards, or handbills; or
- Soliciting signatures to any petition, or soliciting votes for or against a bona fide candidate or ballot measure.

Electioneering is prohibited within the polling place and the one hundred (100)-foot perimeter, including during early voting while voting is taking place.

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<sup>392</sup> W. Va. Code §3-1-37.

<sup>393</sup> C.S.R. §153-8-3.

<sup>394</sup> W. Va. Code §3-1-37.

Property owners within the restricted zone may engage in electioneering on their own property, provided that the activity is otherwise lawful.<sup>395</sup> However, property owners may not invite non-property owners to engage in electioneering on their premises.<sup>396</sup>

All permanent business within the one hundred (100) foot perimeter may remain open, and employees may pass through the restricted area “while in discharge of their legitimate business.” However, no electioneering may occur under the guise of conducting business.<sup>397</sup>

Vehicles located within the perimeter are not required to remove bumper stickers or signs affixed to the vehicle while passing through or parked.

Permanent signs, such as billboards, located within the restricted area may continue to display political advertisements and are not required to be removed on Election Day. Political signs placed on private property within the perimeter are also permitted.<sup>398</sup>

Exit polling is not considered electioneering, provided that the individual conducting exit polling does not engage in prohibited electioneering activities.<sup>399</sup>

Only the following individuals are permitted to enter or otherwise disturb the election room:

- Full-time employees of the Secretary of State’s office;
- Full-time employees of the respective county clerk’s office; and
- The county prosecutor.

## **Media Access to Polling Locations**

According to the W. Va. C.S.R., legitimate news media personnel may remain within the restricted perimeter while conducting official and legitimate business, including exit polling; however, they are not permitted to enter the polling place or the building in which it is located.<sup>400</sup>

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<sup>395</sup> W. Va. Code §3-9-9.

<sup>396</sup> C.S.R. §153-8.

<sup>397</sup> C.S.R. §153-8-4.

<sup>398</sup> C.S.R. §153-8-11.

<sup>399</sup> For a complete list of what does and does not qualify as electioneering, see W. Va. Code §3-8-1a(15), (16).

<sup>400</sup> C.S.R. §153-8-8.

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## CHAPTER SEVEN: Post-Election Activities

### Canvass

Canvass is the proceeding in which the materials, equipment, and results of an election are reviewed, corrected, and officially recorded before the election is certified. The county commission, acting as the board of canvassers, is required to meet on the fifth (5<sup>th</sup>) day following each election held in the county (excluding Sundays).

The board of canvassers may require any election official who was present at the election to testify and may issue any necessary orders to ensure accurate returns and results. All orders, questions, and witness responses must be recorded in writing and preserved.<sup>401</sup>

The board of canvassers consists of the members of the county commission and is presided over by the county clerk in all elections, except for municipal elections that are *not* held in conjunction with a county or state election. In those cases, the municipal governing body serves as the board of canvassers, and the municipal recorder presides.<sup>402</sup>

The board may conduct the canvass only when a majority of commissioners are present at all times. The board may adjourn, but only for as long as necessary. If a majority is not present, the board must adjourn until the following day and continue to do until a majority is met.<sup>403</sup>

During the canvass, the board opens the sealed ballot packages and counts the ballots without unfolding them. The ballot numbers are recorded, and the ballots are then placed in new envelopes, which are sealed and signed across the seal by the board members to prevent tampering.

### *The Central Counting Center*

All proceedings at the counting center, including the canvass, must be conducted under the supervision of the county clerk and must take place in a room “of sufficient size and satisfactory arrangement to permit observation.” Persons entitled to be present include:

- Candidates whose names appear on the ballots, or their representatives who present written authorization signed by the candidate;
- Two (2) representatives from each political party appearing on the ballot, selected by the chair of the party’s county executive committee; and
- A reasonable number of members of the general public. If all interested members of the public cannot be accommodated at once, periodic and convenient rotation must be provided.

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<sup>401</sup> W. Va. Code §3-6-9(a).

<sup>402</sup> C.S.R. §153-18-2.1.

<sup>403</sup> C.S.R. §153-18-3.2.

No unauthorized individual may touch any ballot or election record.<sup>404</sup>

Ballots must be counted and processed in teams of two (2), with each team consisting of members from opposite political parties. These individuals must be deputized and must sign a written oath. Each will be issued an official badge, which must be worn prominently.<sup>405</sup>

If any ballots are damaged or defective to the extent that they cannot be processed by the automatic tabulating equipment, a true duplicate copy must be created in the presence of representatives from each political party on the ballot and substituted for the damaged ballot. The duplicate must be labeled “duplicate,” and a serial number must be recorded on both the damaged and replacement ballots.

If it becomes impracticable to count all or part of the ballots using tabulating equipment, the county commission may order that the votes be counted manually.<sup>406</sup>

### ***The Process***

After a quorum is established, the board of canvassers begins the canvass by receiving absentee ballots. These ballots – postmarked on or before Election Day – must be delivered in packets sorted by precinct, along with the related application packets and precinct lists. Any absentee ballots that were challenged by the clerks are also sorted by precinct. The board must also receive a certification from the clerk responsible for absentee voting, confirming that the registration records for each voter have been examined and that the unchallenged ballots were cast by properly registered voters.<sup>407</sup>

Absentee ballots *not* postmarked by Election Day and received after polls closed are to be separated, along with their original applications and a list of the ballots. The board opens the packet and examines each ballot, counting and recording the number of envelopes with late or missing postmarks. These are returned to the packet and resealed once the precinct is processed. If a ballot is found to have a proper postmark dated on or before Election Day, it will be transferred to the corresponding precinct materials for later processing.<sup>408</sup>

The Secretary of State provides a canvassing guide and worksheet for each canvassing body. The board must follow the procedures and fill out worksheets for each precinct.<sup>409</sup>

The guide provides that the board shall proceed with the following steps:

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<sup>404</sup> W. Va. Code §3-4a-27(a).

<sup>405</sup> W. Va. Code §3-4a-27(b).

<sup>406</sup> W. Va. Code §3-4a-27(f).

<sup>407</sup> C.S.R. §153-18-5.1.

<sup>408</sup> C.S.R. §153-18-5.2.

<sup>409</sup> C.S.R. §153-18-6.1; see the “Best Practices Guide for Canvassing”:

<https://sos.wv.gov/FormSearch/Elections/Informational/Canvassing%20Manual.pdf>; see “Best Practices Guide for Recounts”: <https://sos.wv.gov/FormSearch/Elections/Informational/Recount%20Manual.pdf>.



- Randomly select a number of precincts to be manually counted by hand. The method of random selection is left up to the board but must occur during a public meeting;
- Manually count at least three percent (3%) of the precincts;
  - If the manual count differs from the machine count by more than one percent (1%) or changes the outcome of an issue, this discrepancy must be disclosed to the public. In such cases, all verified paper ballots are to be manually counted, and the manual count becomes the vote of record;<sup>410</sup>
- Handle one (1) precinct at a time, completing all worksheets and procedures before moving on;
- Start by comparing the total number of ballots cast on Election Day, during early voting, and via absentee ballots – according to the Statement of Ballots Used (SBU) and the Absentee/Early Voting Record (AEVR) – with the number of ballots manually tabulated;
  - If totals differ, the board will count ballot stubs or review printed reports and compare them with number of signatures found on the poll tickets, poll books, or absentee applications;
- Open and count spoiled ballots and compare them with SBU and AEVR. Do the same with provisional ballots;
- Determine the number of unused ballots by examining ballot stub numbers;
- Confirm that total number of received ballots equals the total of voted, provisional, spoiled, and unused ballots. Discrepancies must be resolved in the canvass record;<sup>411</sup>
- Review and process absentee ballots by mail that were received *after* Election Day. If deemed valid,<sup>412</sup> the votes are accepted;<sup>413</sup>
- Sort absentee ballots into two groups: those to be counted and those not to be counted. Do not open ballots that will not be counted;<sup>414</sup>
- Shuffle the small envelopes to preserve voter anonymity before removing ballots one (1) at a time, separating the stubs (keeping them apart from Election Day stubs), and set aside any ballots with write-in votes;
- Tabulate ballots, with write-ins tabulated last;<sup>415</sup>
- Return all absentee ballots, stubs, and related materials (including those not counted) to the precinct envelope, and document the number of absentee ballots;
- Review provisional ballots and determine if they are to be counted. The board may decide validity individually by dividing them into two groups (count and no-count);
- Protect the privacy of provisional voters; do not announce their names. If only one (1) valid provisional ballot exists for a precinct, it must be grouped with another precinct in the same district and noted in the record. Provisional ballots are to remain sealed and maintained

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<sup>410</sup> W. Va. Code §3-4A-28(d).

<sup>411</sup> C.S.R. §153-18.

<sup>412</sup> See “Processing Absentee Ballots” on page 60.

<sup>413</sup> C.S.R. §153-18.

<sup>414</sup> C.S.R. §153-18.

<sup>415</sup> C.S.R. §153-27-4.3.

- with other election materials;
- For ballots to be counted, number the inner envelope (starting with one), shuffle, open, and mark the enclosed ballot with the corresponding number. Review for write-ins and set those aside;
- Add provisional votes to the original precinct totals and return the ballots to their envelopes;
- Record findings for each precinct, including all comparisons and ballot counts. Any discrepancies must be documented in detail;<sup>416</sup>
- Handcount the ballots of the preselected precincts using a team of four (4), who must take a written oath;<sup>417</sup>
  - Two (2) members read the votes aloud while two (2) record them on tally sheets;
- Compare the hand count with the automated count.<sup>418</sup> If a mechanical error is found, the board must determine the cause and take corrective measures;
  - If the error cannot be corrected, the manual count prevails;
  - If corrections are made, votes may be re-tabulated by machine;
  - All activity must be documented in the canvass record;<sup>419</sup>
- If a discrepancy greater than one percent (1%) is found between hand and machine tallies across all offices in any precinct, then all precincts must be hand-counted;<sup>420</sup>
- Upload and send canvass results to the Secretary of State and confirm receipt;<sup>421</sup>
- Reseal all precinct materials in their appropriate envelopes. Declare and record results in the official record;<sup>422</sup>
  - For multi-county elections, report the date and time of the declaration to the Secretary of State via phone or email.<sup>423</sup>
- Set a time to certify results after the forty-eight (48) hour recount period.<sup>424</sup>

If the board needs to test any vote recording device, it must be done by the county clerk in the presence of the board of canvassers and any candidate or party representative. Test results must be documented and filed by the county clerk.<sup>425</sup>

If the county or precinct uses only paper ballots (i.e., not ExpressVote, iVotronic, or optical scan systems), the canvassing procedure is the same, but the three percent (3%) hand count is not required.

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<sup>416</sup> C.S.R. §153-18.

<sup>417</sup> W. Va. Code §3-4A-27(b).

<sup>418</sup> C.S.R. §153-18-7.

<sup>419</sup> W. Va. Code §3-4A-29.

<sup>420</sup> C.S.R. §153-18-7.5.

<sup>421</sup> C.S.R. §153-18.

<sup>422</sup> C.S.R. §153-18.

<sup>423</sup> W. Va. Code §3-6-9(a)(8)(B).

<sup>424</sup> C.S.R. §153-18-8.2.

<sup>425</sup> W. Va. Code §3-4a-29(2).

For a provisional vote cast by a person with a disability in a precinct where they are not registered, the board must determine during canvass whether the voter was registered in a precinct with a non-accessible polling place. If so, and the vote is otherwise valid, it will be counted.<sup>426</sup>

### ***Recount Request Period***

The board of canvassers may not issue an order certifying the results until the end of a forty-eight (48) hour waiting period following the public declaration made after canvass. During this forty-eight (48) hour period, any candidate whose name appeared on the ballot may request that the ballots be unsealed and recounted.

If the candidate appeared on the ballot in multiple counties, the forty-eight (48) hour period begins when the last county's board of canvassers makes its public declaration of results.<sup>427</sup>

In the case of a ballot issue that does not involve a candidate, any affected voter may request a recount during this same period.<sup>428</sup>

### ***Touch Screen Counting Procedure***

The manual also includes procedures for counting votes cast using touch screen voting systems. The board of canvassers must still conduct a hand count of three percent (3%) of precincts. Ballots cast, as recorded on the SBU and the AEVR, are still compared – except they are printed using the Election Management Software (EMS).

The manual recommends tabulating the ballots either by merging them into the EMS system or by manually counting them and entering the results into the machine.

The procedure for counting provisional ballots remains unchanged; however, once the board decides to count them, the results must be entered into the EMS for the appropriate precinct.

If a paper jam or other error causes votes to be misread, ballot images must be printed directly to flashcards for each affected machine.

The final canvass results are transmitted to the Secretary of State through EMS rather than by mail.<sup>429</sup>

### ***Certification***

If no recount is demanded, the board of canvassers will prepare duplicate certificates of election for each office and each political party in a primary election. In a general election, certificates will be prepared for each office and ballot issue. In both cases, the certificate must include the total

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<sup>426</sup> See "Assisting Voters" on page 76.

<sup>427</sup> W. Va. Code §3-6-9(a), (b), (c).

<sup>428</sup> W. Va. Code 3-4a-28(c).

<sup>429</sup> See "Best Practices Guide for Canvassing":

<https://sos.wv.gov/FormSearch/Elections/Informational/Canvassing%20Manual.pdf> ; see "Best Practices Guide for Recounts": <https://sos.wv.gov/FormSearch/Elections/Informational/Recount%20Manual.pdf>.

number of votes received by each candidate or for each ballot question, written in both words and numerals. For general elections, triplicate originals of the certificates must be prepared for federal, statewide, legislative, and judicial offices.<sup>430</sup>

Certification is the official action of the board of canvassers, and each member must sign each certificate. Forms for certification are provided in W. Va. Code §3-6-10 (for general elections) and W. Va. Code §3-5-17 (for primary elections).

Certificates must be transmitted within thirty (30) days of the election, if a recount is demanded, within thirty (30) days following the conclusion of the recount. The distribution of certificates is as follows:

**For both primary and general elections:**

- One (1) original is filed with the election records of the county commission or, in the case of a municipal election, the municipal governing board.
- For candidates on the ballot *only* within the county - including single-county districts, county offices, or county executive committees: one (1) original is filed with the circuit court clerk and (1) copy is with the Secretary of State.
- For candidates on the ballot in multiple counties: one (1) original is filed with the Secretary of State.
- Upon request by the county party executive committee chair, a certificate showing vote totals for each candidate of the party in the county or magisterial district may be sent to the chair.
- In municipal elections: one (1) original is filed with the municipal recorder or clerk.<sup>431</sup>

**Additional requirement for general elections:**

- One (1) certificate must be mailed to each candidate who appeared on the ballot.
- One (1) copy must be filed with both the Governor and Secretary of State for the offices of: President, Vice President, U.S. Senator, U.S. House of Representatives, Justice of the Supreme Court of Appeals, and Circuit Court Judge.
- One (1) original must be filed with the Secretary of State for all candidates for statewide office (excluding Justices of the Supreme Court of Appeals), and for candidates for the State Senate and House of Delegates.
- One (1) original must be filed with the Secretary of State for each special ballot issue.<sup>432</sup>

If a recount is requested by a candidate, the board will proceed to certify all other candidates and issues that are not subject to the recount.<sup>433</sup>

In addition to the board's certification, the Secretary of State must certify to each county clerk

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<sup>430</sup> C.S.R. §153-18-9.1.

<sup>431</sup> C.S.R. §153-18-9.3.

<sup>432</sup> C.S.R. §153-18-9.4; W. Va. Code §3-6-11.

<sup>433</sup> C.S.R. §153-18-10.1.

the name of the candidate of the political party who received the highest number of votes in that party's primary election and is therefore to be placed on the general election ballot. This certification must be issued no later than the seventy-first (71<sup>st</sup>) day before the general election.<sup>434</sup>

If a person submits a notarized statement of withdrawal, the Secretary of State will not certify that person for the general election ballot.<sup>435</sup>

### ***Voting Machine Examination***

Within seven (7) days following the completion of canvass, any candidate or local chair of a political party may examine sealed election materials, such as vote-recording devices, electronic poll books, and related items. Notice of the time and place of the examination must be posted at the central counting center before 9:00 a.m. on the day of the examination. All individuals entitled to attend – including any candidate or their authorized representatives – may be present. After this seven (7) day period, the vote-recording devices, test results, and standard validation test ballots must be sealed and retained for one (1) year.<sup>436</sup>

### **Recount**

During the forty-eight (48) hour period after the close of canvassing but before the final certification of results authorized individuals may demand a recount by paying a bond set by the board of canvassers during the canvassing process. The bond must be “in a reasonable amount with good sufficient surety” to cover the anticipated expenses of the recount, but it may not exceed \$300.<sup>437</sup> The bond may be in cash, personal property, or other acceptable form. The party requesting the recount is responsible for *all* costs incurred during the recount, including any amounts exceeding the bond, unless they choose to stop the recount.

Persons authorized to demand a recount include candidates in the election in question, or, in the case of a recount on a ballot issue, any voter affected by that issue.<sup>438</sup>

Once the demand for a recount is received, the board has forty-eight (48) hours to notify all candidates who filed for the office in question. The notice must include the time, place, and date of the recount and must be delivered by the county sheriff to each candidate in person. If the candidate cannot be located, the notice must be delivered to the candidate's usual residence and information about it will be given to any person over the age of sixteen (16) found there. If no one is found, the sheriff shall post the notice on the front door of the residence. The sheriff must make a return stating the manner and time of service. If the sheriff fails to perform these duties,

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<sup>434</sup> W. Va. Code §3-5-18.

<sup>435</sup> W. Va. Code §3-5-11.

<sup>436</sup> W. Va. Code §3-4a-28(a).

<sup>437</sup> W. Va. Code §3-6-9(h).

<sup>438</sup> W. Va. Code §3-4a-28(c).

he or she will be fined \$20.<sup>439</sup>

For recounts involving a special ballot issue, a notice must also be posted on the front door of the facility where the recount will take place.

The recount must be scheduled to being no sooner than three (3) days after service of the notice. After the notice is received, any candidate so served has an additional twenty-four (24) hours to notify the board in writing if they intend to preserve their right to demand a recount of precincts not included in the original request.<sup>440</sup>

Only one (1) recount may be conducted per precinct. A recount of any precinct may be requested only by the candidate who initiated the recount and by any candidates who timely notified the board of their intent to preserve their recount rights.

As previously noted, recount demands must wait until the final results are reported in all counties where the requesting candidate or ballot issue appeared.

If a malfunction is discovered in the vote tabulating equipment during the recount, the board must attempt to resolve the issue in accordance with the procedures set forth in W. Va. Code §3-4a-29.

### ***Written Request***

The written request for a recount may be submitted by any candidate for the elected office being recounted or any voter affected by a ballot issue subject to a recount. The request must include:

- The name of the candidate (or affected voter) requesting the recount;
- The office or issue to be recounted;
- In the case of a ballot issue, the name and address of the voter;
- A list of all precincts to be recounted;
- A list of any precincts not to be hand-counted; and
- The bond amount set by the board of canvassers.

By default, the request applies to all precincts covered by that election unless the requester specifies otherwise. If the requester limits the scope of the recount, additional precincts may not be added later.<sup>441</sup>

Precincts not designated for hand-counting will be recounted using the same procedures followed during canvass.<sup>442</sup>

The candidate or voter must submit the written recount request to the county clerk, who will

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<sup>439</sup> W. Va. Code §3-6-9(g).

<sup>440</sup> W. Va. Code §3-6-9(f).

<sup>441</sup> C.S.R. §153-20-3.1.

<sup>442</sup> W. Va. Code §3-4a-27; W. Va. Code §3-6-9.

then present it to the board of canvassers.

A request to preserve the right to continue or expand the recount must include the name of the candidate or governing body submitting the request and a statement of intent to:

- Preserve the right to request a recount of additional precincts not included in the original request; and
- Continue the recount if the original requester chooses to discontinue it.

Any candidates or governing board submitting such a request must furnish the same bond as required of the original requester.<sup>443</sup>

### ***Recount Process***

At the conclusion of the forty-eight (48) hour request period, the board of canvassers will certify the results for all offices and issues *not* subject to a recount.

The county clerk or municipal recorder, as appropriate, will assist with the recount. Once the officials in custody of the relevant election materials have delivered them to the board, the recount may begin.<sup>444</sup> Employees of the county commission and the clerk's office may assist, along with any individuals employed for that specific purpose. However, no candidate or immediate family of a candidate may assist in the recount. Likewise, no member of a governing board that requested a special election, their immediate family, or any voter who requested a recount of a special election (or their immediate family) may assist.<sup>445</sup>

All persons assisting in the recount will operate in teams of two (2), consisting of members from opposing political parties. Each assistant will take an oath and be deputized, as officials are during the canvass.

The candidate or voter requesting the recount is responsible for *all* costs incurred while the recount continues, unless the recount results in the reversal of the original election outcome. In such cases, the requester will not be charged. If the original requester stops the recount, and another qualified individual continues it, the continuing party assumes the costs incurred thereafter, unless the election outcome is ultimately reversed. The same rules apply to recounts involving special issues.<sup>446</sup>

A majority of the board of canvassers must be present at all times during the recount. If a majority is not present, the board will adjourn and reconvene daily until the requirement is met. The board may adjourn from day to day if the recount cannot be completed in one (1) day.<sup>447</sup>

Before beginning the recount, the board will determine the order in which precincts will be

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<sup>443</sup> C.S.R. §153-20.

<sup>444</sup> C.S.R. §153-20-4.1-3; see §153-20-6 for the entire recount process.

<sup>445</sup> C.S.R. §153-20-4.6.

<sup>446</sup> C.S.R. §153-20-4.7.b.

<sup>447</sup> C.S.R. §153-20-6.1.

recounted. This order must be decided in a logical manner, such by drawing lots or proceeding sequentially from the lowest-numbered precinct to the highest and must be agreed upon by all parties to the recount.<sup>448</sup>

Prior to the recount, the board must resolve any errors in the recording and tabulation of votes on voting machines and publicly announce any corrected vote totals.

Those permitted to be present during the recount include:

- The candidate or voter who requested the recount (or their officially designated representative);
- Any candidates or voters who preserved their right to demand a recount (or their representatives); and
- A reasonable number of members of the public.<sup>449</sup>

Although these individuals may observe the process, they may not handle any voting materials. However, they are entitled to view and examine tally sheets and ballots, and they have the right to question any ballot. When a ballot is questioned, the team will reexamine it and attempt to determine the voter's intent. Any questioned ballot will be marked.<sup>450</sup> If the team cannot reach a majority decision regarding the voter's intent, the ballot will remain questioned and the votes on it will not be recorded.

Only evidence that is obtainable from the election materials or testimony from election commissioners, poll clerks, or others present at the election may be considered. No extrinsic evidence may be introduced.<sup>451</sup>

When ballots are counted by hand, two (2) teams of two (2) individuals each are required. One (1) team reads the ballots aloud, while the second team records the votes. Each member of the recording team marks their own tally sheet. The recording team will compare their results to identify and correct any marking errors.

Each team may handle only one (1) elected office or ballot issue at a time - even if multiple recounts have been requested - and will recount that office or issue one (1) precinct at a time. Once a precinct's recount is complete, the team may be reassigned to another office or issue.<sup>452</sup>

Provisional and challenged ballots will be treated in the same manner as during canvass, with all necessary steps taken to preserve the secrecy of the votes.<sup>453</sup>

If the results of the recount do not match the canvass totals, the ballots and tallies will be

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<sup>448</sup> C.S.R. §153-20-6.9.

<sup>449</sup> W. Va. Code §3-4a-27.

<sup>450</sup> C.S.R. §153-20-6.3.

<sup>451</sup> C.S.R. §153-20-6.4.

<sup>452</sup> C.S.R. §153.20.6.5.

<sup>453</sup> C.S.R. §153.20.6.7.a.



rechecked by one (1) of the teams to identify any errors in reading or recording the votes.

### ***Stopping a Recount***

The candidate or voter who requested the recount may stop the recount at the conclusion of any precinct by withdrawing his or her request. Any other candidates, voters, or governing boards who preserved their right to continue the recount may then exercise that right, including identifying any remaining precincts that do not need to be hand-counted.

Once a requester has withdrawn from the recount, they may not resume it at a later time. The original requester is responsible for any costs incurred up to the point of withdrawal if the recount does not result in a reversal of the election outcome. Similarly, any individual who chooses to continue the recount assumes the responsibility for all costs incurred from the time they exercised that right, unless the results of the election are ultimately reversed.<sup>454</sup>

### ***Certifying Results***

The recount is complete when the board seals the ballots in a container bearing their endorsement and delivers them to the appropriate county or municipal clerk. Upon completion, the board will certify the recount by preparing certificates in the form provided in W. Va. Code §3-6-10, stating the full names of the persons voted for and the number of votes each received, written in words. In primary elections, certificates will be prepared in duplicate for each elected office considered in the recount and will show the total number of votes received by each candidate. In general elections, certificates for any federal, statewide, legislative, and judicial offices will be prepared in triplicate.

Each member of the board will sign each certificate, which will be prepared and transmitted for the offices involved in the same manner as described above for the canvassing process.<sup>455</sup>

## **Contest**

### ***Contest Process***

Any person who was a candidate for the office in the election to be contested, or a candidate for the nomination to that office, may initiate the contest process.<sup>456</sup>

According to case law, in the interest of fairness, a contest based on specific votes cast may proceed after a recount has been requested and held. However, if the grounds for the contest are limited to allegations of fraud, questions regarding a candidate's eligibility, or the legality of the election itself, the contest may proceed without a recount.<sup>457</sup>

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<sup>454</sup> C.S.R. §153-20-6.8.

<sup>455</sup> C.S.R. §153-20-9.5; W. Va. Code §3-6-11.

<sup>456</sup> W. Va. Code §3-5-20.

<sup>457</sup> *Miller v. County Com'n of Boone County*, 208 W. Va. 263, 269 (2000).

### ***Contest of County, District, or Municipal Office***

After the close and certification of the election results, a candidate for any county, district, or municipal office will have ten (10) days to file a civil action in the circuit court with jurisdiction over the county or district where the election took place.<sup>458</sup> At the trial of the contest, the circuit court shall hear all legal and proper evidence that may be brought before it by either party, and may, if considered necessary, require the production of the poll books, certificates, and ballots deposited with the county clerk or municipal recorder or clerk, and examine the same.<sup>459</sup>

A contestant has the burden of proof in an election contest. At the conclusion of the trial of the contest, the circuit court shall direct that a certified copy of the order declaring the result of the contest be delivered to the parties. Either party may appeal the decision of the circuit court to the West Virginia Supreme Court of Appeals.<sup>460</sup>

### ***Contest of Delegates***

Contests of delegate nominations are heard and determined by the party executive committee of the county from which the delegates are chosen. The contestant must submit a written petition to the county executive committee and provide notice to the contestees. The committee will then convene a hearing on the matter.

The committee must render a decision within ten (10) days after the county mass convention is held. In addition, both the circuit court and the Supreme Court of Appeals have original jurisdiction to review the committee's decision, either through a writ of mandamus or other appropriate legal proceeding.<sup>461</sup>

### ***Cost of a Contest***

The costs of a contested election include expenses incurred for serving notices, taking depositions, and compensating witnesses. These costs must be noted at the foot of each deposition by the individual taking it. If the contestant fails to set aside the election result, the costs incurred or expended by the person declared elected will be awarded against the contestant.

Otherwise, each party will pay their own costs, unless it is found that the person declared elected was guilty of fraud or malpractice in the election, or fraud in procuring that declaration. In such cases, costs will be awarded in favor of the contestant.

Costs awarded to either party will be decided by the court or joint session that decides the case, and a certificate signed by the presiding officer will be issued to the prevailing party.

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<sup>458</sup> W. Va. Code §3-7-6.

<sup>459</sup> W. Va. Code §3-7-7(b).

<sup>460</sup> W. Va. Code §3-7-7(e).

<sup>461</sup> W. Va. Code §3-5-21.

No person contesting a seat in the Legislature will be entitled to mileage reimbursement if the contest is unsuccessful.<sup>462</sup>

### ***Contests in Special Circumstances***

If the election of any of the following positions is contested, certain special procedures must be followed:

- Governor;
- Secretary of State;
- Treasurer;
- Auditor;
- Attorney General;
- Commissioner of Agriculture;
- Judge of the Supreme Court of Appeals;
- Judge of the Intermediate Court of Appeals; or
- Judge of a Circuit Court.<sup>463</sup>

Contestants must give notice within ten (10) days after the election is certified and return notice must be given within ten (10) days of the initial delivery of notice,<sup>464</sup> except in contests involving judicial positions. In those cases, notice may be provided up to sixty (60) days after the certification and return notice may be given up to thirty (30) days thereafter.<sup>465</sup>

Also, in contests of judicial offices, bribery may only be used as a basis for the contest if the contestee has *already* been convicted of bribery related to the election.

All depositions must be completed within forty (40) days of service of the notice. These depositions must be delivered to the Clerk of the House of Delegates, who will submit them to the appropriate joint committee or special court overseeing the contest.<sup>466</sup>

If the election of the Governor is contested, the notice of contest and depositions will be referred to a joint committee of the two houses for examination and report. The committee will consist of two (2) senators elected by the Senate and three (3) delegates elected by the House of Delegates. The contest will be determined in a joint session of both houses of the legislature, held in the Hall of the House of Delegates, with the President of the Senate presiding.<sup>467</sup>

In all other special cases, excluding the office of Governor, the contest will be heard by a special court. This court will be composed of one (1) person selected by the contestee, one (1) person selected by the contestant, and one (1) person selected by the Governor. The three members

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<sup>462</sup> W. Va. Code §3-7-9.

<sup>463</sup> W. Va. Code §3-7-3.

<sup>464</sup> W. Va. Code §3-7-1.

<sup>465</sup> *Loomis v. Jackson*, 6. W. Va. 613 (1873).

<sup>466</sup> *Morrison v. McWhorter*, 57 W. Va. 614 (1905).

<sup>467</sup> W. Va. Code §3-7-2.

will meet at a time and place within the state designated by the Governor, to hear and decide the case.<sup>468</sup> The contestant must also file a petition with the Governor, via petition, includes grounds for the contest, notice, and specifications. The petition will remain on file in the Governor's office as justification for any actions the Governor may take.<sup>469</sup>

Each member of the special court will be entitled to \$10 per day and reimbursement for mileage equivalent to that of a member of the Legislature. The special court may also employ a stenographer at "reasonable compensation."

The special court may require the presence of witnesses and the production of documentary evidence at any designated hearing location. In the event of noncompliance, the special court may seek assistance from the circuit court to compel testimony or evidence. The circuit court will issue an order requiring the person to appear and produce the requested evidence.

Decisions of the special court may be appealed to the West Virginia Supreme Court of Appeals, or, if the Supreme Court is not in session, to a judge of the Supreme Court by petition filed within thirty (30) days after the final decision is certified to the Governor. If the contestee or appellee is absent, a copy of the notice may be mailed to his or her last known post office address. A copy of the petition must also be served to the contestee before submission to the court.

The Court or judge will set a hearing date no sooner than five (5) days after the notice is served. The Court may suspend the effect of the special court's final decision, require bond, and impose reasonable and just terms and conditions upon the petitioner before fixing the time for the final hearing.

Before a final hearing, the special court must file all papers, testimony, evidence, and records with the Clerk of the Supreme Court of Appeals, along with a copy of the special court's final decision. After hearing arguments by counsel, the Supreme Court will decide the matter – both in law and in fact - "as may seem to it to be just and right." The Supreme Court has jurisdiction to enforce its decision by writs of prohibition, mandamus, and certiorari, as appropriate.<sup>470</sup>

### ***Contests for Legislative Seats***

Any person intending to contest the election of a senator or delegate shall, within ten (10) days after the election is certified, give him or her notice thereof in writing. The contestee shall, within ten (10) days after receiving the notice, deliver to the contestant his or her objections. The notice of contest shall be presented to the proper branch of the Legislature, within ten days after its meeting.<sup>471</sup>

Either party may take depositions beginning at any time after the delivery of the original notice. Reasonable notice must be given for each deposition, and the notice must specify the names of

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<sup>468</sup> W. Va. Code §3-7-3.

<sup>469</sup> *Loomis v. Jackson*, 6. W. Va. 613 (1873).

<sup>470</sup> W. Va. Code §3-7-3.

<sup>471</sup> W. Va. Code §3-7-4.

the witnesses to be examined.

Depositions may be taken before a justice, notary, or any other officer authorized to take depositions in civil suits. If a deposition is taken before such an officer, that officer must certify and seal the deposition, write his or her name across the seal, and send it – by mail or other means – to the clerk of the body in which the seat is contested. If the contest is referred to a committee, the clerk shall forward the deposition to the committee for examination.

All depositions must be completed no later than five (d) days before the second (2<sup>nd</sup>) Wednesday of the following January.

Subpoenas for witnesses will be issued by the clerk of the circuit court. Witnesses will be entitled to the same allowances and privileges, and will be subject to the same penalties, as if summoned by the circuit court.

### ***Tied Votes in Legislative Contests***

If there is a tie vote at the conclusion of the contest, the house in which the contest is being heard will declare who is elected.<sup>472</sup>

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<sup>472</sup> W. Va. Code §3-7-5.

# 8 CHAPTER EIGHT: Penalties for Elections Violations

## Chart of Penalties

The following chart outlines the criminal penalties provided for in the W. Va. Code. Alleged violations of these sections of Code are investigated and prosecuted by the Secretary of State's Investigations Unit. Common violations include, but are not limited to, vote buying, improper election procedures, and campaign finance violations. Felony violations are highlighted in red, while misdemeanor violations are shown in blue.

| Type of Crime                                                                      | Violation                                                                                                                                                                    | Code Citation                                                              |
|------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| Illegal Voting Procedures                                                          | Authorizing or providing assistance to a voter known to not require assistance.                                                                                              | §3-1-34(i).                                                                |
| False Swearing in Oath or Affirmation                                              | Falsely swearing, counseling, advising, aiding or abetting another in the commission of false swearing during voting procedure.                                              | §3-1-34(h).                                                                |
| Improperly Registering or Failure to Lawfully Register Voter by Clerk or Registrar | Allowing a person to register when not entitled, or refuses to register a lawful voter, or makes an improper entry into a registration form or file.                         | §3-2-32(a).<br>*Note: applies to municipal officials per §§3-1-2a; 8-5-13. |
| Improper Registration                                                              | Registering or changing registration when not entitled.                                                                                                                      | §3-2-32(b).                                                                |
| Neglect of Duty by Registration Official                                           | Neglecting the duty to perform registration functions or to follow the directive of the Secretary of State as the Chief Registration Official.                               | §3-2-33(a).                                                                |
| Alteration of Registration Document                                                | Improperly inserting a name or entry on registration document; destroying or removing such record.                                                                           | §§3-2-34(a) & (b).                                                         |
| Withholding Information                                                            | Neglecting or refusing to furnish required information in connection to registration to the WVSOS or County Clerk.                                                           | §3-2-35.                                                                   |
| False Information on Registration Form                                             | Providing false information, or suborning false information, on a voter registration application.                                                                            | §3-2-36(a).<br>§61-5-1.<br>§61-5-3.                                        |
| False Registering of Voter                                                         | Registering a voter who is not qualified by providing false information.                                                                                                     | §3-2-36(b).                                                                |
| False Swearing on Affidavit for Absentee Ballot                                    | Providing false information on an affidavit for an absentee ballot.                                                                                                          | §3-3-4(g).                                                                 |
| Illegal Assistance to Absentee Voter                                               | Unlawfully providing assistance to an absentee voter.                                                                                                                        | §3-3-4(h).                                                                 |
| Absentee Ballot Certification                                                      | Delivering more than two (2) absentee ballots on behalf of another person, examining or altering the ballots, or certifying the same. False certification is false swearing. | §3-3-5(k).<br>§3-9-3.                                                      |
| Ballot Commissioner Neglect                                                        | Failing to account for every ballot by commissioner.                                                                                                                         | §3-4A-19(h).                                                               |

|                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                |                         |
|--------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| Unlawful Presence at Voting Booth                                  | Being present within five (5) feet of voting booth, communicating with person who is voting, or bringing recording device near the voting booth.                                                                                                                                                                                                                                               | §3-4A-23.               |
| Tampering of Vote Recording Device                                 | Tampering or attempted tampering of vote recording device, e-poll book, ballots, ballot label, ballot card, program deck, or other tabulating equipment.                                                                                                                                                                                                                                       | §3-4A-33(a).            |
| Election Official Permitting Tampering of Vote Recording Device    | Permitting tampering or attempted tampering of vote recording device, E-poll book, ballots, ballot label, ballot card, program deck, or other tabulating equipment.                                                                                                                                                                                                                            | §3-4A-33(b).            |
| Willful Neglect of Duty by Officials                               | Neglecting duties imposed under Article 4A of Code.                                                                                                                                                                                                                                                                                                                                            | §3-4A-34.               |
| Violation of Certificate of Nomination for Unaffiliated Candidates | Failing to provide true information on certificate of announcement for unaffiliated or minor party candidates.                                                                                                                                                                                                                                                                                 | §3-5-23(h).             |
| Failure to File Campaign Finance Report                            | Failing to comply with any reporting requirement by candidate.                                                                                                                                                                                                                                                                                                                                 | §3-8-2(h).              |
| Receiving Currency Greater Than \$50                               | Receiving currency of the U.S. or a foreign country greater than \$50 by candidate.                                                                                                                                                                                                                                                                                                            | §3-8-5d(a).             |
| Accepting Contributions from Foreign Nationals                     | Soliciting, accepting, or receiving contributions or donations from foreign nationals.                                                                                                                                                                                                                                                                                                         | §3-8-5g(b).<br>§3-9-23. |
| Providing False Information to Person Required to Report           | Providing false information to a person required to report campaign contributions.                                                                                                                                                                                                                                                                                                             | §3-8-5d(c).             |
| Providing Grossly Incomplete or Grossly Inaccurate Statement       | Failing to file a sworn, itemized statement within the time limitations, or willfully filing a grossly incomplete or grossly inaccurate statement.                                                                                                                                                                                                                                             | §3-8-7(a)-(b).          |
| Disclosing Existence of Complaint, Report, or Investigation        | Disclosing the existence of the filing of any complaint or report, or the facts of any investigation.                                                                                                                                                                                                                                                                                          | 3-8-8(i).               |
| Illegally Influencing a Vote                                       | Threatening harm, directly or indirectly, to influence a vote, forcing an employee to influence a vote, publishing a false statement to influence a vote, or publishing a paid editorial to influence a vote.                                                                                                                                                                                  | §3-8-11.                |
| Anonymous Campaign Support                                         | Circulating campaign literature or ads without disclosures, promising employment as a reward for political support, contributing more funds than allowable per campaign finance limits, soliciting from certain governmental employees, soliciting without disclosing any commission to be received by the solicitor, or unlawfully using a newspaper/mail receptacle for campaign literature. | §3-8-12.                |
| Ballot Tampering                                                   | Providing false return of voting results, mis-delivering ballots, signing the name of another to a ballot, or unlawfully accessing a voter registration system.                                                                                                                                                                                                                                | §3-9-1.                 |
| Printing or Possession of Unauthorized Ballots                     | Printing or possessing ballots not authorized by ballot commissioners or taking ballots from an election room.                                                                                                                                                                                                                                                                                 | §3-9-2.                 |
| False Swearing on Affidavit                                        | Providing false information on an affidavit.                                                                                                                                                                                                                                                                                                                                                   | §3-9-3.                 |

|                                                                       |                                                                                                                                                        |                                                         |
|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| Failure to Return Supplies                                            | Failing to procure or deliver election supplies.                                                                                                       | §3-9-4.                                                 |
| Destruction or Removal of Election Supplies                           | Removing or destroying supplies or booths.                                                                                                             | §3-9-5.                                                 |
| Unauthorized Presence in Election Room                                | Being unlawfully present within one hundred (100) feet of an election room.                                                                            | §3-9-6.                                                 |
| Refusal to Allow Challenge or Frivolous Challenge to a Vote           | Refusing the right of a qualified voter to vote, knowingly accepting an unlawful voter, or maliciously challenging the right of a voter.               | §3-9-7.                                                 |
| Inducing or Conspiring to Illegally Vote                              | Inducing or conspiring to induce a voter to place a name or mark on a ballot to demonstrate how they voted.                                            | §3-9-8.                                                 |
| Unlawful Acts at Polls                                                | Disclosing how someone voted, electioneering at a polling place, giving the wrong ballot, mishandling a ballot, or marking a ballot when not voting.   | §3-9-9.                                                 |
| Disorder at Polls                                                     | Preventing or attempting to prevent a voter, official or otherwise from election, by force, menace, fraud or intimidation.                             | §3-9-10.                                                |
| Failure to Make Election Returns                                      | Willfully failing to prepare and certify results of election within twelve (12) hours after completion of the count.                                   | §3-9-11.                                                |
| Influence or Bribery by Candidates                                    | Loaning, offering, or promising money or thing of value to elector to influence or retain a vote.                                                      | §3-9-12.<br><i>See also §61-5-4 for Felony Bribery.</i> |
| Buying or Selling Votes                                               | Offering or giving money or anything of value for a vote.                                                                                              | §3-9-13(a).                                             |
| Receiving Money or Thing of Value for Vote                            | Receiving money or thing of value for a vote.                                                                                                          | §3-9-13(b).                                             |
| Unlawful Acts by Employer                                             | Giving pay envelope, statement, poster, or verbal message threatening or tending to influence an employee to vote a certain way.                       | §3-9-15.                                                |
| Unlawful Acts by Corporations and Membership Organizations            | Soliciting or contributing corporate funds by force, threat, or condition of employment.                                                               | §3-8-8(d).                                              |
| Receiving or Soliciting Money or Thing of Value for a Vote            | Asking for or receiving money, gifts, loans, employment, or endorsement for voting or refraining to vote.                                              | §3-9-16.                                                |
| Unlawful Voting in Primary                                            | Knowingly voting in primary on ticket of wrong party, or election official knowingly giving ticket of wrong party.                                     | §3-9-17.                                                |
| Fraudulent Absentee Ballot                                            | Intending to commit fraud by obtaining, removing, or disseminating an absentee ballot, intimidating an absentee voter, or altering an absentee ballot. | §3-9-19(a).                                             |
| Election Official Failure to Perform Duties Regarding Absentee Ballot | Willfully failing to lawfully process an absentee ballot.                                                                                              | §3-9-19(b).                                             |
| Obstructing Employee's Freedom to Vote                                | Preventing an employee from voting or casting a particular vote.                                                                                       | §3-9-20.                                                |
| Betting on Elections                                                  | Betting or wagering money or thing of value on any election.                                                                                           | §3-9-22.                                                |
| General Provision Penalty                                             | Committing any violation not prescribed by law.                                                                                                        | §3-9-23.                                                |



|                                                             |                                                                                                                                                                                                                                            |              |
|-------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Exceeding Public Finance Limits                             | Receiving funds more than allowable per campaign finance limits                                                                                                                                                                            | §3-12-15(a). |
| False Information to State Election Commission              | Making a false statement to the State Election Commission.                                                                                                                                                                                 | §3-12-15(b). |
| Unchallenged, Unlawful Authorized Absentee Voter Assistance | Authorizing a voter to receive unchallenged assistance in voting an absentee ballot when the individual is known to the official designated to supervise and conduct absentee voting not to be authorized to receive assistance in voting. | §3-3-4(i).   |

## Violations Caused by Organizations

In the case of violations caused by any:

- Partnership;
- Committee;
- Association;
- Corporation; or
- Other organization.

The following individuals will be subject to the penalties described above:

- Officers;
- Directors; or
- Managing or controlling heads; who
  - Knowingly and willingly participated in the violation.<sup>473</sup>

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<sup>473</sup> W. Va. Code §3-8-13.

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